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## International Political Economy meets Foucault

**Edited by Stefano Guzzini and Iver B. Neumann**

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# The Diffusion of Power in Global Governance

## International Political Economy Meets Foucault

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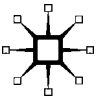

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# Preface

This volume originated at an ECPR joint workshop session in Lisbon, Portugal, in April 2009. We sought to provide a forum for researchers who shared a wider understanding of governance as including aspects of structural power and informal rule, where they could meet and discuss for almost a week. One of the core concerns of the workshop was to encourage more debate between scholars working within the fields of international political economy (IPE) and Foucauldian studies. We remain grateful to the participants for engaging in this not always frictionless exercise. Since concepts acquire their meaning from the theories in which they are embedded, our debates required running simultaneous theoretical translations, as well as some theoretical multilingualism. However painful they may be, such translations offer the possibility of trenchant criticism combined with the enrichment of one's own and other people's approaches, because they provide a critical angle that is both internal and external. Translations thus become part of another language, even while they remain part of the voice of the originating language.

Not all of the papers could be selected for this volume, and some, duly revised, have been published elsewhere (Nik Rajkovic in the *European Journal of International Relations*; Jason Sharman in *International Studies Quarterly*). We also went on to invite scholars to cover the issue of private governance and apply Foucault directly to IPE (see chapters by Graz and Nölke, and Vestergaard). We hope that this volume, with its by now thoroughly reworked chapters, will begin to succeed in redirecting the analysis of governance away from its current too exclusive focus on questions of steering.

Running this workshop together was also a good experience for us. By the time this volume appears, we will have known each other for 20 years, having met for the first time in 1992 at the inaugural Standing Group of International Relations conference in Heidelberg, Germany. Over the years, we have kept up our very own IPE-meets-Foucault conversation, usually over meals in Florence (Italy), Oslo (Norway) or Copenhagen (Denmark). It was good, finally, to co-publish.

*Stefano Guzzini and Iver Neumann*
*January 2012, Copenhagen and Oslo*

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# 1

# The Ambivalent 'Diffusion of Power' in Global Governance

*Stefano Guzzini*

This volume brings together scholars in fields ranging from International Political Economy (IPE) to Foucauldian governmentality studies to shed light on the analysis of global governance.[1] Such an undertaking is not new. Against the background of heavily IPE-dominated discussions in International Relations (IR) (the heyday of the journal *International Organization*), a first encounter took place in the theoretically rich 1980s. Analysts, later to be called constructivist had tried to use regime analysis as an opener for questions that were akin to a Foucauldian understanding of political order (Kratochwil and Ruggie, 1986; Kratochwil, 1988). In turn, some Foucauldian analysis met with regime analysis or derived approaches (see e.g. Ashley, 1989; Keeley, 1990). A second rapprochement occurred once the discipline had taken on the task to understand, explore and integrate constructivist thought within IR, during a decade stretching from the early to the later *magna opera* of that school (Kratochwil, 1989; Onuf, 1989; Wendt, 1999). By the time constructivism was accepted – visible in the official inclusion as one of the main schools of thought (Katzenstein et al., 1998) and in the emergence of authoritative programmatic syntheses (Adler, 1997; Ruggie, 1998; Guzzini, 2000a) – Foucauldian analysis again met various institutionalist and constructivist approaches to international governance, now also in the fields of 'high politics', such as international security. Timid at first (Prakash and Hart, 1999), this rapprochement recently became more substantial by reverting to an earlier focus on power (Guzzini, 1993, 1994; Barnett and Duvall, 2005b) and by developing an independent Foucauldian research programme on the international political order (Sending and Neumann, 2006; Hynek, 2008).

This book is an attempt to combine the findings of these two waves of debates with a focus on the nature of the international political order or governance. It aims to include:

1. the sensibility of IPE scholars to the development of private and market authority in global governance;
2. the constructivist focus on impersonal rule through social (including discursive) practices;
3. a Foucauldian research agenda on governmentality in which practices of the self affect both the agency and the subject of order.

This volume's main theme is a core problematique of global governance, namely whether or not power has been diffused in world politics. The principal puzzle is that combining the three literatures mentioned above prompts a fundamental ambiguity as to its answer. On the one hand, many approaches, in IPE or transnational studies, have established a diffusion of power away from the state to private actors or impersonal forces (the market as legitimate mode of value distribution). Whether with regard to the governance of finance, the environment or indeed security, power is seen as 'slipping away', diffusing from the state, but often not really captured by anyone or anything else. Here, power is diffused in the sense of being 'shared', but it is also 'dispersed', 'diluted' or 'dissipated'. On the other hand, and here Foucauldian approaches are prominent, this diffusion is seen as a new mode of governance itself, rather than its dispersion. Instead of seeing power moving between actors or 'evaporating', to use Susan Strange's expression, power itself is reconfigurated and the actors themselves are seen as part of a new way in which international political order or power is to be understood. Instead of concentrating on the King and whoever may have taken his place, this type of analysis sees a far more efficient way of rule operating, in which power is reaching into, and using the lever of, market actors and global civil society. Here, power is diffused but not diluted; it expands into every niche of world society and has, through this different mode, increased. Although, in this new mode of governance, more agents have been 'empowered', this empowerment goes hand in hand with a widened and deepened system of rule that applies to and works through those very empowered agents.

This volume explores to what extent these two visions are really antithetical or whether they can be combined, and, if so, how. This introductory chapter lays the groundwork by specifying the central terms: the diffusion of power and governance. It does so in two steps.

The first step is more conceptual. It provides the definitions of the core terms, specifying the basic understanding of governance as order, as well as four central problematiques of global governance as it relates to the diffusion of power. In a second step, the chapter provides an overview of different theoretical approaches to understand those problematiques of governance. It aims to show the theoretical shifts necessary to move from one framework to another, and hence the possibilities or not to combine their respective insights. The other chapters of the book develop empirical facets that apply and also combine those different frameworks.

## Which governance? Which diffusion of power?

To understand whether or not there has been a diffusion of power in global governance, and whether this has diluted or enhanced governance, it is important to specify one's understanding of what we mean by governance in the first place. Although this first clarification should be self-evident, it is not uncommon to see analyses assume the very meaning of governance. Yet, as we will see, that meaning is not given, nor obvious, and is moreover directly connected to the wider analysis of politics and power. It is not that we have a 'problem of governance' to which different theoretical approaches give different answers; we have different theoretical approaches which give different meanings to governance and its problems.

In the following, I propose to think about governance in terms of 'political order', whereby 'political' stands for anything affecting the 'public interest' or 'common good'. This is a wider definition than most approaches. Yet, as the discussion of different definitions shows, it is present in many of them, either directly or indirectly (see the discussion in Späth, 2005). Such a relatively non-exclusionary definition is justifiable, if not required, when comparing and discussing alternative approaches, rather than presenting a single one.

On the basis of this understanding, this section will first discuss two main approaches to governance, one which features the often hierarchical basis of agential ordering, and one which focuses on the more diffuse origins and effects of order: steering capacity versus (informal) rule. In a second step, the section deals with the relationship between understandings of governance and concepts of power, showing important affinities. At the same time, I will argue that the two concepts of power and governance, although related, should not be conflated. More generally, but surely for the purpose of this book about the relationship

between the diffusion of power and global governance, I will insist on keeping the two concepts apart. Finally, four specific problematiques of governance can be derived – agency, scope, mechanisms and normative content – that will guide the analysis of the diffusion of power in this volume.

**Governance as political order: Steering capacity versus (informal) rule**

The usual starting point for the definition of governance is that it is a term similar to, but distinct from, government. Putting it this way, it immediately suggests a core definition: those things done by governments, yet done by someone else or a combination of actors. 'Governance without government' (Rosenau and Czempiel, 1992) here means the replacement of (state) government by functionally equivalent actors. Such a definition stays government-centred and organizes our thinking around the paradigm of (state) government for the understanding of political order in international society.

But, and this relates to the other side in our analysis, 'governance without government' can also mean something else. It can stand for the achievement of political order with other means or through other modes than with classical government tools. In this vision, governance is not thought of in terms of (state) government but beyond it; indeed, order through government (by whatever actor) is but a part of governance. The first take on 'governance without government' mentioned before more or less fixes the rules of the international game, but alerts us to the different players. The second approach takes the multitude of actors for granted and explores the ensuing rules of the game. By doing so, this second understanding redefines the core of politics or political order. This section introduces these two basic understandings.

By looking for functional equivalents to government, the first approach leads to analyses which understand global governance in terms of 'steering' and steering capacity, usually with an institutionalist and public policy-framework. Depending on the type of institutionalism at hand, the visions of governance differ. At one end, this can lead to definitions of governance which strongly emphasize the executive branch of government, such as when David Lake writes: 'It is the design, construction, and maintenance of mechanisms to enforce agreed upon behaviors that lies at the heart of contracting, as a process, and governance, as both an analytic concept and the set of mechanisms actually employed' (Lake, 1999, p. 33).

In a wider public-choice framework, this focus on steering capacity produces the classical collective action problematique. When

government is 'metaphorically' seen as 'a firm producing goods and services in exchange for revenue', it is only one step to define governance as 'a form of exchange through which . . . potential joint gains are realised' (Lake, 1999, p. 38), such as, for instance, the reduction of transaction costs. Governance thus being understood as a collective good, 'any effort to arrange for governance necessarily confronts dilemmas of collective action' (McGinnis, 1999, p. 55).

But the focus on steering capacity is also visible in more sociological institutionalist approaches which would allow for wider understandings of political ordering than public choice. Common to those approaches is a stronger emphasis on rules and the logic of appropriateness. Still, even then, the analysis of governance has been reduced to the analysis of 'formal institutions designed to obtain collective goals' adding only a more ideational understanding of the origins of those institutions (Haas, 1999, p. 104), although, more recently, we have seen at least a better conceptualization of the relational aspects of authority and hence agency in global governance (Avant et al., 2010b). Finally, a sociological institutionalism can recover regime theory's original more diffused conception of institutions as exactly not entailing only formal institutions (i.e. mainly international organizations),[2] when, for example, governance is defined as the 'process by which rules are generated' (Sandholtz, 1999, p. 89).

This last definition goes beyond a sheer focus on steering capacity and points to a second general way of approaching governance, namely as (informal) rule. Several conceptual shifts are necessary for this. First, political order is understood more through its effects than through its source.[3] It is not starting from agents and their potential role in the provision of order, but from that which makes the political order and then back to its possible originators. Second, it includes the analysis of constitutive rules for understanding the 'rules of the game'. And, finally, it does not assume intentionality or control for the understanding of order. If in Rosenau's succinct definition 'governance is order plus intentionality' (Rosenau, 1992, p. 5), here it is not. It allows for both unintended consequences (which Rosenau's definition could also accommodate) and non-agential or structural effects (for the different underlying conceptions of power, see Guzzini, 1993). It implies that a mere analysis of steering capacity does not cover rule; and also, that by understanding rule in a wider sense, one has a better grasp of actual steering capacity.

Hence, a comprehensive definition of governance is needed to allow for an analysis which does not wish to prejudge against any of the two main approaches to governance; indeed, one that wishes to explore a

possible common ground. Sticking with definitions derived from public policy approaches runs the obvious risk of limiting the theoretical intake to a discussion of institutionalisms.[4] In this book governance will be understood as the provision of order, where that provision can be based on steering capacity and/or (informal) rule. And it is a 'political order' in that it looks at the way that order defines and realizes the common good or public interest.

Such a focus on governance as order is not new to IR. In fact, it may come more naturally to IR scholars who have to think of politics without an overarching government around. It is probably not accidental that the English School in IR has been particularly sensitive to this because it is based upon the idea that there is an international society, yet not one akin to the national one. The missing world government does not imply that there is no social contract on the global level, or no institutions of international politics; nor is it only an intermediate stage temporarily and teleologically removed from its ideal, the world government. But to be able to see its specificity, the very definition of politics and of the 'international', had to be divorced from the model of national governments. In this context, Hedley Bull argued against a 'domestic analogy' (Bull, 1966) and famously subtitled his magnum opus on international society *A Study of Order in World Politics* (Bull, 1977).

Yet also political scientists interested in situations of revolution or profound regime change have tended to opt for wider concepts of politics and governance away from steering capacity. In Huntington's (1968) classic *Political Order in Changing Societies*, politics, rule or governance is not limited to the steering of the political system. Indeed, the order is fundamentally dependent on a series of economic, social and more narrowly political (institutional) processes. And those processes are important to having a comprehensive understanding of the dynamics of that 'political order'.

## Power and governance

Defining governance in terms of order prepares the ground to see the problematiques which a diffusion of power may prompt in international affairs (and in its analysis). To see that relationship, it is important from the start to keep the conceptual substance of power and governance distinct. In other words, it is important to see that governance and power are connected. Equally important, however, is that one does not try to reduce one to the other. Although all visions of order imply visions of power, and vice versa, order is not reducible to power, nor vice versa.

There has been a consistent tendency to conflate the two, or reduce one to the other. When Dahl (1961) famously answered the question 'Who governs?', he did want to understand the type of political order – pluralist or elitist – in a modern democracy. He derived the answer from an analysis of power. As critics were quick to point out, that was not enough to account for the political order at large. Yet, instead of keeping the concepts apart and seeing how they may relate in various ways to each other, the critics, too, tended to reduce one to the other, and hence added up more and more factors into the concept of power (for a partial exception, see Bachrach and Baratz [1970]). And hence in a comparable, if reverse move, Lukes (1974) tried to conceptualize power as personal autonomy in terms of his three dimensions of power – that is, in terms of order understood as a structure of domination. This move is comparable to Dahl because, again, power analysis and the analysis of order are reduced to each other. It is done in reverse, since now power is not used to understand order, but order (three-dimensional power) to understand individual power (autonomy, freedom). Moreover, Lukes, like many others, sometimes uses the term 'power' for all these levels. Adding Foucault to the fray, Barnett and Duvall (2005a) simply pursue this reductionist approach if global governance is what is now understandable through four types of power, as the text sometimes suggests. And, if this is not the case, they leave governance ultimately under-determined by offering a mere (and known) typology of power concepts.

Hence although power and governance are intrinsically linked, there are good reasons to keep them conceptually apart. One is what I have called the 'overload-fallacy' of power conceptual analysis (Guzzini, 1993), showing that ultimately the concept of power becomes simply unwieldy when scholars attempt to include all aspects of a power analysis, from personal autonomy to cause and influence, from social domination to impersonal rule. Knowing about structural power is not enough to understand structures of power (domination). And trying to fuse the two is not useful nor can it be made without producing meta-theoretical contradictions.

A second reason is more tied to the implicit philosophical bias with which the analysis is carried out if the distinction between power and order is not upheld. Power is ubiquitous. From here it is only a small step to put power at the centre of the understanding of politics and also political order. And this is an almost self-evident step for certain traditions in political theory which are inspired by, although not reducible to, the Machiavellian turn in the understanding of politics, such as political realism, Marxism and also Foucault. It is surely

not accidental that the Foucauldian approach sees the closest connection between forms of power (bio-power) and order (governmentality). But that is not all there is to political order. In the good manner of the social sciences trying to rid themselves of the normative concerns of political philosophy, it may appear so. Already Carr (1946, Chapter 6) knew, however, that a purely realist approach was not possible, neither to politics in general nor to the (then) 'new international order' in particular: utopia, morality or the 'common good' were not reducible to power, and neither was international order. Order is surely always for someone, but it also always stands for some thing, some value.

## The diffusion of power and four problematiques of governance: Agency, scope, mechanisms and normative content

The diffusion of power meets governance in four problematiques, namely the locus and range of agency, the functional scope of the order, the mode or mechanisms of order, and finally its normative content. Yet, as we will see later in this chapter, the problematiques look different, indeed present developments which may not be seen as problematic to start with, when conceived by diverse theoretical lenses.

The most common problematique of governance with a diffusion of power is the question of the agency of order: who is/are the orderer(s)?[5] If the US was or is no longer able to run the international order alone, perhaps a kind of multilateral system could take its place. And yet, perhaps governments are more generally not able to handle the international order alone. So, perhaps a system of governments and markets, of public and private authorities, could substitute for the domestic Leviathan or become the equivalent of the move to 'private-public partnerships'.

A second problematique of governance, already less self-evident, has to do with the scope of the international order. Just as the domestic political system has come to include ever more aspects of a society as part of the public sphere and hence under government regulation or even administration, also the international society has seen the scope of order expand. It includes a variety of policy sectors, from education and health to housing – and the environment, both local and global, as the Club of Rome was to remind the world more than 40 years ago (Meadows et al., 1972). What are the effects of such a diffusion of scope on the international order?

But besides questions of agency and scope – that is, of the sources and extension of order – the new problematique of governance refers

also to its mechanisms: how is the ordering achieved? The discussion of mechanisms is not to be confused with mere questions of implementation, as important as they are. It has more to do with the underlying rules of the game which define a particular order in the first place and make it function. Whereas the analysis of the agent and scope of order tends to think of governance in terms of steering and the capacity to do so (Who steers in which policy field?), here we are interested in the question of ruling. Such ruling can be intended and contractual, or – and this is different from the steering approach – diffuse, implicit, habitual and taken for granted. It is in this context that it makes particular sense to talk about 'governance without government' in the second meaning mentioned above, since the issue is not the changing role of government actors ('governors') within an ever increasing number of policy fields but the different mechanism through which consent and order are achieved. With its focus on impersonal rule, the diffusion of power could mean here the increase in order or discipline in the community, where conduct appears as 'orchestrated without a conductor' (Bourdieu, 1980, p. 113; in IR, see also Ashley, 1989).

Finally, a central problematique has to do with the normative content of the order as affected by the diffusion of power. A political order, as understood here, implies and often explicitly debates the substance of the 'common good' or public interest. This is strong both in consequentialist traditions, such as utilitarianism, where it describes the 'the greatest good for the greatest number of people', and deontological philosophies, such as the Republican tradition, where it is understood around the principle of civic virtue. Now, when a diffusion of power in terms of agency, scope or mechanisms takes place, this may well have an impact on the way the common good is defined, both procedurally and in terms of its content. If power moves away from the state to private actors, what does that mean for the common good. 'Who elected the Bankers?' (Pauly, 1997). On the one hand, the expansion of scope has been a long-time target for libertarians and liberals in their critique of an ever increasing government (for the history and liberal critique of this expansion, see Jouvenel, 1972). On the other hand, it has been a trope of radical, but also liberal critiques of real existing democracy, when they analyse the mechanisms through which allegedly 'private' actors affect the definition and provision of the common good, indeed how they affect the very (liberal) separation between politics and economics (see the late Brian Barry, 2002, 2003).

After having now defined the terms of the analysis, the next two sections will show how different theoretical frameworks have defined

governance and coped with the four problematiques of the diffusion of power. The next section will discuss the understanding of governance as a problem of effective steering, as it appears in Hegemonic Stability Theory (HST) and its contemporary little brother, the neo-conservative discussion on empires, as well as regime theory, which has morphed to become what is often understood to be the study of governance. It is followed by an analysis of governance as structural power and as governmentality, in which concerns of steering are increasingly replaced by a more structural understanding of how control is achieved in world affairs. This last section is the crucial one for the remainder of the book, since it shows some points of encounter between approaches coming out of IPE and Foucauldian studies in the understanding of governance as informal rule.

## Governance as a problem of effective steering

Regime theory and HST are widely known approaches from the 1970s/1980s which still inform much thinking about international governance. Indeed, their ongoing success (in always different disguises) may imply that theorizing is not done from an empirical assessment that changes theoretical theses, but the other way round, so to speak. The theorizing starts from the mind-set of the existing common sense in IR and how it can cope with the question of the diffusion of power, and it then proceeds to explicitly theorize it.

Hence, in today's discussion, the theoretical assumptions stay unchanged, only the empirical garb adapts. What used to be HST has resurfaced in the recent discussion of 'unipolarity' and 'empire', and regime theory has been successfully transmuted into many of the public policy understandings of governance. Sometimes it looks like playing with LEGO, those colourful little interlocking plastic parts which can be rearranged at will to construct toy houses, cars, cities and so on. It is as if we unmade the house constructed yesterday by simply rearranging the same pieces into a new one.

### From HST to theorizing US empire

HST's vision of international governance is obviously heir to the realist tradition insofar as it conceives of an effective order only in terms of a Leviathan, a centralized locus of power which would imitate the domestic government. Given the absence of such world government (anarchy), the only realistically credible, if ultimately weak, substitute would be a concentration of power in one leader, who alone would be

able to approximate the role of government on the world scene (for a longer discussion and critique of HST, see Guzzini, 1998, Chapter 10).

Still, there were also new facets in this approach. The main one concerns the idea of a public good. This is where IPE made a difference to classical realism.[6] In its contribution to HST, it meant that in order to keep an efficient system working, and to allow a proper steering of the global political economy, having a hegemon was the only real game in town. Since the world was interdependent, and since an efficient order was in a more general interest, we needed to support the attempt of efficient governance which could only come from a world leader. In fact the very steering capacity and the order become a 'collective' good in itself. In a moment of perceived power decline of the US, HST and related approaches are a clear call for 'burden-sharing' by Europe and Japan, for instance. Helping the US to provide the public good of order was to be seen in their very self-interest: what supported the power of the US was ultimately good for them.[7] Any attempt to undermine that position, as the French government did in the 1960s by converting their dollars into gold, was not just disloyal but irrational.[8]

Such a logic applies also at a moment when the US was perceived as concentrating power in an unprecedented way, where the 'unipolar moment' (Krauthammer, 1991) could be used, by neo-conservatives but not only them, as an apology of a 'Liberal Empire' (see the critique in Bishai, 2004). In a curious reversal of power arguments, 'unipolarity' would provide the justification for legitimate primacy. Power, as a concept, is tied to the idea of responsibility in our political discourse (Connolly, 1974). Attributing power to an act moves this act into public domain – it becomes a political issue – and prompts a need for justification by the responsible agent (Guzzini, 2000b, 2005). Hence, the original HST debate largely tried to make the US less responsible for the decline of the international order, arguing that it had not sufficient power and hence no responsibility for it. The recent debate turned this relationship between power and responsibility onto its head: the power holder no longer downplays its power for keeping aloof from criticism, it insists in its power-thus-responsibility so as to justify a worldwide interventionism. If it were true that the US enjoys a very large power and superiority, then it is only natural that it assumes a large responsibility for international affairs. Insisting on its special power triggers and justifies a disposition for action.

And a special action it is. US primacy means that the US has different functions and duties (responsibilities) than other states. From there, the final step to a right or even duty to unilateralism is not far. Its role as

world policemen is no longer a choice, but actually a requirement of the system (see e.g. Kagan, 1998). Being compelled to play the world leader means, in turn, that the rules which apply to all the others cannot always apply to the US. It becomes an actor of a different sort: its special duties exempt it from the general norms. This is the basis of its tendency to exemptionalism (Ruggie, 2005).

The argument can become even stronger. Having an interpretation of power that raised the US to the pinnacle as the only country able to rule entails that it always does right to try in responding to its special duty – even if it regularly fails. There is no way to disconfirm this logic. If order has not yet been found, given the unprecedented (read military) power position of the US, the only way forward is to do more of the same and let the US try to fix it again, being the only power there is. The logic is a kind of Microsoft theory of security: the problem is not that there is too much Windows, but that there is still not enough (Guzzini, 2006). In this extreme case, governance is reduced to, and at the same time justified as, the sole steering capacity of the major power.

HST and neo-conservative primacy clearly refer to the first of our problematiques of governance: agency. With states being the main actors to order world politics, and with no government above, a small group of states – ideally a single leader – is the closest we can get to an efficient political order. And since such order is a collective good in HST, supporting that leadership becomes a normative request. (In the following discussion I will stick to the more moderate HST).

Power and agency are very closely connected in this conception. A diffusion of power implies a multiplication of 'powers' and/or a more egalitarian distribution of capabilities among existing ones. As such, there are several political challenges to this type of governance when power diffuses.

For one, it is the possible existence of 'free riders' and the need for some legitimacy or consent of the order. If countries start to free ride too much or do not share the necessary burden of hegemony, then the hegemony and so the actual order will suffer. Here, HST includes a series of secondary actors who are necessary for shouldering the order; they alone would neither be able to establish it or to run it, but the hegemon is ultimately also dependent on their collaboration. It is not accidental that the theory refers to 'hegemony' and not just power preponderance, since it does include a vision of order which is to some extent consensual, or, at least, rational insofar as countries do not see any better alternative (that has been a quite common defence of the system) and therefore share an interest in its continuation.

A second possible threat to the order could come from the national level, when power gets dispersed within countries. This has gained some prominence under the touchy label of 'failed states' in combination with ideas of 'shared sovereignty' (Krasner, 2004, 2005) and/or the revival of mandate systems or trusteeships. By the logic of this understanding, the leader or hegemon (or hegemonic group) may intervene to 'restore' order in some countries for the sake of the international order at large. And it does restore order in two ways. In its more direct sense, it reasserts the order of the state itself by strengthening its grip on its territory and people. But it also restores the more fundamental order of the system of states. Where individual states lose the grip on their power, where pockets of competing order arise, that dispersed power could come to undermine one of the very ordering principles of the modern state system. Pirates (Thomson, 1994; Löwenheim, 2007), Private Military/Security Companies (Singer, 2003; Avant, 2005; Leander, 2005, 2006, 2010; Krahmann, 2010, and Chapter 2 in this volume), mafias (Arlacchi, 1983; Armao, 2000) and warlords (Duffield, 2001) challenge not only the actual but also the formal monopoly of legitimate violence within the state system. Just as then, when states aligned in defence of their prerogatives, the international society would be asked upon to do it now.

Finally, the problematique of agency applies to the diffusion of power away from the state system to other actors within the same order. This can raise questions of ultimate responsibility, but also about the origins of the collective good more widely understood. In the early writings on the role of multinational enterprises and also later on markets, HST and mercantilist IPE scholars were surely alarmed, and this from early on, by the possibility that economic actors or markets were to replace politics for the establishment of what counts as national or public interest or the common good.[9]

It is here where the problematique of agency and content fuse. It is important to note that classical realist writers, and scholars influenced by them, do usually not share a technocratic vision of order. True, they may value 'order' as an end in itself, since achieving some regular pattern of governance would be part of their general endeavour to limit the violence of otherwise inevitable conflicts. But reducing the question of world order to the enhancement of cooperation structures that diminish transaction costs would strike them as almost soulless and apolitical. Such a technocratic move may succeed in taking the sting out of some conflicts, reducing them to coordination problems. But it also misses a sense of why, with which values and for whom such order is to be

upheld in the first place. Politics is not only about cooperation gains or exchange for wealth maximization.

**Regime theory and the policy study of governance**

Since regime theory has generally a more liberal and multilateral touch, it conceives of the new world order as one run by networks of actors where (at least some) governments play a major role, but where the agenda and underlying rules are increasingly set also by other actors, such as multinational corporations and later also non-governmental organizations (NGOs) and now networks.[10] Not only are there now significant actors of multiple types, the world political system is also fractured into a series of issue areas where no clear hierarchy can be established.[11] Had the military sector and military resources been the main defining features for the establishment of a world hierarchy and order in the past, so has the appearance of 'low politics' (here mainly economics) now done to international politics what the extension of more and more policy fields did to domestic politics. 'Governance is likely to be fragmented and heterogeneous' (Keohane and Nye Jr, 2000, p. 26).

What unites regime theory with the previous approaches is the ultimate question of how that order is achieved, how we can steer it. 'By governance, we mean the processes and institutions, both formal and informal, that guide and restrain the collective activities of a group' (Keohane and Nye Jr, 2000, p. 12) In Keohane and Nye's discussion, this is mainly (but not only) operationalized in terms of the different actors that do the guiding and restraining. And although regime theory did not necessarily start like this, it has acquired a public policy-oriented understanding of governing.

But it is not difficult to see how this vision clashes in many regards with the previous, in particular with the neo-conservative one. Whereas the vision of a hegemon or an empire tries to comprehensively picture the order in terms of its main orderer, the regime approach to governance is far more interested in the articulation of individual policy fields; that is, it tends to define the order from its scope, indeed from the variety of ways which may be used in different issue-areas to accomplish that steering. Rather than almost dogmatically assuming that only 'power' can yield results (and hence hegemons are necessary), regime theory is, in a good sense, more empiricist by trying to locate the variety of steering which is going on. Rather than assuming that the diffusion of power prompts a need to re-centre power around the hegemon (or empire), it wants first to find out whether such diffusion was less efficient in the first place: diffusing power does not necessarily imply a

decline of steering capacity![12] Hence, the more heterogeneous agency of order is something to be analysed, its effects established, not simply deduced. As a logical corollary, such effects can then be again tied to power, but power redefined – as 'soft power' (Nye Jr, 2004, 2007), for instance.

Saying that regime theory defines governance not from its agency but from the scope needs to be qualified, however. For the scope of governance is not defined *ex ante*: any cooperation which can be shown to be regulated in one manner or another (and the reference definition of regimes allows also general principles to do this) is part of a wider analysis of global governance, be it the international regime of whaling.

With such wide agency and scope, regime theory was to face a problem in the longer run. Whereas initially, this approach was meant to be read in parallel to the realist research programme, projecting a different picture of the international order and its governance, its empirical curiosity implied that it could expand to virtually all issues which showed at least some political salience. Opening up the complexity of the international order, the different ways of governing it in all its sub-parts, made a wonderful research agenda (there was always 'more research to be done'), but it was bound to make it increasingly more complicated to see the forest (global governance) for all its trees (regimes) or to refrain from reducing the one to the other.

This was further exacerbated by the understandable move to compare these different types of steering and hence to pursue regime analysis within a context of policy studies, in which comparative, American and international politics could meet in a rationalist public choice paradigm (Milner, 1998). This implied that the aggregation of the findings was not to be found in a comprehensive paradigm for understanding the international system, but rather in generalizing the mechanisms with which such steering takes place. No longer able to provide a comprehensive picture of global governance (and partly no longer interested), the study of governance becomes itself the focus; accumulation of knowledge takes place in the refinement of the study of the mechanisms with which public goods are distributed, 'good governance' achieved. It may not provide an overall picture of global governance, something many regime analysts would be sceptical about in any case, but it can make generalizations about the conditions under which different types of governance mechanisms and outcomes can be expected. Still, for all the ordering (governing in a wide sense), there is less and less a grip on order (governance) itself, unless it is reduced to such individual instances.

An analysis of governance which is mainly scope (if also agent) oriented, does not, at first hand, appear to see much problematic in the diffusion of power. Indeed, it is used as an important empirical input into a reconceptualization of order where power can be soft and no hegemon needed, and the effects are diverse depending on the new and different scopes of governance. The extension of scopes is to some extent co-extensive with the analysis of governance.

And yet, as mentioned earlier agency, scope and mechanisms feed into the concern about the normative content of that order. The new scope and the variety of actor-networks which go with it, as well as the interest in the formation and ruling of norms, means that this dimension is seen as problematic. It comes in the guise of a discussion on democratic legitimacy or accountability (Grant and Keohane, 2005). Having now found out many more instances of provisions of public goods, with more actors involved, the obvious question becomes whether these new actors have a similar accountability than previous public actors or not. With a diffusion of power comes a problematique of diffused legitimacy processes.

Interestingly, this normative interest relates the analysis back to the original purpose of regime theory which was meant as a replacement for the realist picture of world politics, and not some specified analysis of policy fields. For accountability not only speaks of those actors to be thought of as accountable, but also about the community to which they should be accountable. It not only develops the power-responsibility link (mentioned above) in a different way, but also allows us, at least in principle, to speak of that international community in another way than just in terms of agency.

## Governance as rule: Structures of power and governmentality

Political theory has been long aware of the different conceptualizations of power, either agent-based, even intentional, or more in the tradition of *Herrschaft* which concentrates on mechanisms of legitimation, including impersonal ones, whether rational or habitual. Within the term 'government', the analytical focus shifts from the effectuation of *policies* to the order of the *polity*. Despite regular reminders of the state of power theory (Berenskoetter and Williams, 2007), the (public) policy orientation of much IR research has produced such a neglect of the latter that even such a notorious defender of a non-intentional concept of power as Steven Lukes is lumped together with agent-based

intentional agenda-setting power analysis (see e.g. in Lake and Wong, 2009, p. 132). Hence the idea of this volume: to pool different research traditions which have been more attentive to governance as rule or order, mainly inspired by research in IPE and by Foucault. Since IPE is a vast field, I have taken the liberty of discussing one author in particular, Susan Strange, since, in my reading, her approach can be used most fruitfully to show the move towards a more informal understanding of rule. Therefore, the focus on Strange is by no means implying that hers is the only way to approach governance in IPE. This volume's chapters by Susan Park, and by Jean-Christophe Graz and Andreas Nölke, for instance, bear witness of different, if compatible, pathways. For the Introduction, however, I preferred a more focused and detailed presentation around one author.

Still, looking at the similarities of, say, Susan Strange's approach to structural power and Foucauldian analyses of governmentality must appear odd to some. Strange, after all, had little patience with excursions into lengthy political theory. But the underlying reason for exploring those links is that her work shows a break with a consideration of order understood in terms of steering capacity; instead, her analyses understand governance also in terms of a more general question of order. As a result, she sees both a diffusion, if not 'evaporation', of steering capacity, just as regime theory did, and, at the same time, a more indirect 'ordering' taking place though the impersonal mechanisms of international structures which have diffused new types of control. And it is this latter component which is comparable to a Foucauldian take on power as governmentality. Or, put differently, both approaches try to come to terms with governance and the underlying problematique of social order in terms of a *re-conceptualization of power* away from the relatively direct definition given in the more conventionalist approaches. Even soft power is often reduced simply to the ideational sources of power, rather than through the different mechanisms via which it functions. It is through those re-conceptualizations of power that this section will present a vision of the social order where governance may not, solely or even mainly, be understood as the capacity to steer policies, but as the diffused mechanisms of control which establish a 'transnational Empire' (Strange), or the mechanisms of self-control to which global agents are 'subjected' (Foucault).

### Susan Strange: The power of structures and unintended effects

Strange's approach towards order is multilayered, including (1) at its base four social values, which are then connected to (2) four functions

that any modern public order must fulfil, and within which resources are distributed in such a way as to define (3) the overall hierarchy in the system which (4, returning to 1), ultimately decides about the specific mix of values which particular political communities realize.[13] And because she aims at a comprehensive understanding of social values and public functions, her analysis embeds steering capacity in a wider context of social order.

Her starting point is basic social values. She posits four of them: justice, liberty, wealth and order (in the more restricted sense of security). Since this part of her argument is often overlooked, it is worth elaborating it. For it crucially points to a distinction between a focus on the 'public' or 'collective good' – as done by almost all steering approaches mentioned above – and on social values or the 'common good', as she does (in a similar vein, see Avant et al., 2010a, p. 366). 'Public goods' is an economic concept which defines a certain category of (non-excludable and non-rivalrous) goods which the market would not provide and for which specific collective action problems apply. Although all sides would agree it to be preferable that this good be provided, the aggregation of their self-interest would not result in its provision. There are numerous solutions to this market failure, most prominently including government action (or the action of a hegemonic leader, see above). And so, governance here becomes mainly understood as a collective response to market failures (as e.g. in McGinnis, 1999, p. 58).

This vision of a 'public good' places the debate about social order in a technocratic sphere. For such goods can be relatively 'objectively' defined and their solution justifies the intervention of a public agent. It basically moves the definition of what is to be solved and solvable by government intervention to the technical discussion of the characteristics of specific goods, such as national security, clean water or air. Anyone experienced in politically polarized or deeply divided societies, where value clashes incapacitate public action, can appreciate the considerable appeal of such a technocratic vision. And since the international society is defined by exactly this, it is not surprising that international authorities encourage such more technocratic framing of agendas simply to get things done.

And although, as we will see in a moment, Strange is no enemy to such an approach, her vision of order moves beyond it. Firstly, she approaches hierarchy differently than HST and regime theory. According to her, to understand the underlying pattern and shifts in social hierarchy, any analysis in IR needs to answer the question *cui bono?* or whom would the public choices ultimately profit. Her basic question

of order is hence not in terms of a given hierarchy and how it steers affairs, but what the effects of policies, intended or not, can tell us about hierarchies. Power is as much a factor that explains politics as one which is itself assessed through the analysis of politics. The analysis includes a vision of power in terms of its agency or rather, origins, and in terms of its effects; it is both oriented 'forward' towards effects (steering) and 'backwards' from effects of order (ruling). And secondly, she moves beyond mere governance-as-steering approaches because she ties this reproduction of hierarchy and domination to the provision of basic social values, to the constitution of the 'common good'. Hence, hierarchies and power are the means via which different societal mixes of basic social values, such as justice, wealth, order (security) and liberty can be best understood, not the other way round.

To better understand power and hierarchy, Strange assumes four basic functions in any modern society, namely the provision of security, knowledge (ideas and technology), goods and services, as well as credit and money which, in today's world, can only be approached and provided within an international (or transnational) environment. These functions define also the four basic structures of the global political economy (security, production, finance, knowledge). Within those structures, and here again the shift away from governance as mere steering is visible, power needs to be defined not just in terms of intended effects, but of unintended effects which are connected to the particular way the provision of those needs is structured and the place particular agents have therein.

And this prompts her to a reconceptualization of power. Strange calls the traditional concept of power 'relational power'. It is the capacity to make someone else do what they would not otherwise have done. Yet, this concept of power cannot account for the power or dependencies that derive from the capacity to provide the societal needs of a global economy. For this, Strange introduces the concept of 'structural power'.

In some of its aspects, her 'structural power' is quite conventional; it refers to the ability to shape the four basic structures of the global political economy (Strange, 1985, p. 15). It is called 'structural' since its effects are indirect, channelled through those structures; but so far, it is a classical agent-based approach. Yet the specificity becomes clearer when she includes not just direct behavioural effects, but also the ability to shape the rules of the game in these structures – not only its regulative but also its constitutive facets, and, even more crucially, the ability to profit from those rules. This conceptualizes power from the effects backwards and unties the understanding of power from intentionality, and,

consequently, from there being a certain 'driver' or orderer. By redefining power, and having tied power to the understanding of order, 'governance as steering' would be clearly insufficient if not reductionist (and ideological since it allows blame to be deflected from the US).

A further novel aspect is that this form of power is non-territorial, 'exercised directly on people – not on land' (Strange, 1989, p. 170). The holder of this power is the 'international business civilization', constituted by public officials of some states, corporate managers, scientists, bankers and market players. Their headquarters are not in Washington, but [SG: at the time] in New York, Chicago and Los Angeles (Strange, 1990, pp. 262–265). This transnational class constitutes the base for a 'nonterritorial empire' (Strange, 1988a, p. 7). Strange argues that one must assess the power of any agent with regard to their hold in this empire.

Now, we can return from this reconceptualization of power to her understanding of global governance. She believes 'structural' refers to a diffusion of power, both in its origins and effects. No longer tied to intentionality, power is diffused in its effects, because the effects of globalization link actors and societies throughout the world. Power is diffused in its origins, because of multiple agency and non-territoriality. Thus, the provision of basic political functions on a global scale are the result of structurally embedded decisions and non-decisions, made by government and other, in particular market, actors, whether intentionally or not. And this provision, in turn, will affect the distribution of basic social values and so define the governance of the international system. Governance is not about steering the political order, but about the order's patterns of domination. The political aim is not (only) about the provision of public goods, but about the common good to 'interpose policy between change and its victims' (Strange, 1982b, p. 20).

An approach to governance which looks at power in terms of domination, not steering, in terms of effects on the provision of common good, and not just public goods, on effects, whether intended or not, and not just on agency, moves the analysis towards mechanisms of governance rather than prime movers, and puts the problematique of the content of that order into the limelight. In a sense, Strange's approach synthesizes all four problematiques of the diffusion of power for governance: agency, scope, mechanisms and normative content of order. This may well be the effect of her aim, at least in my reading, to use IPE as a means to recover a more comprehensive vision of politics in IR.

By using both a steering capacity and a ruling approach, the problematique of power diffusion for agency is complex and not

without tensions in Strange's writings. Indeed, in them it seems that the different problematiques of governance heavily overlap and pull against each other. With regard to agency and mechanisms, this includes the tension between an informal rule and its mechanisms; this seems to escape any steering capacity and yet a plea for a benign leadership to solve the problems is made as if classical steering was still possible. With regard to scope, it accepts both the new wider agenda of different issue areas and different almost 'sovereign' actors while being sceptical at heart about what they may possibly achieve together.

At the same time, her use of the concept of power is clearly an indication of her perseverance not to let agents off their responsibility for the system: whether or not it will work, they have to do it. And this includes all agents, she emphasized. For the central piece of her analysis is the provision of those basic public functions for realizing the basic values in political orders. She would not necessarily champion a specific mix of those values. But she surely did not want to allow actors to forget about the normative content of the international order. People disagree on values, but that is no good pretext for an analyst to neglect them, forgetting that political order is fundamentally about them.

**Governance as governmentality**

With Strange's moves to look at order from its effects, not its originators, and with her (at least occasional) emphasis on looking at actual social groups and people for analysing the location of power and agency in international affairs, we have taken a major step away from an understanding of governance as steering. The final step, one in which governance is almost solely understood through its effects on – and through – people, is to come with the introduction of Foucault's thinking into international affairs.

Michel Foucault's approach sees power not concentrated in some King or follow-up institution. As he sardonically remarked in an allusion to the French Revolution, the analysis of power had still not beheaded its King (Foucault, 1977). Rather, power is to be thought of in terms of a wider social control; it is diffuse, impersonal, both 'subjecting' individuals to it and taking force from their conduct.

It has become commonplace to distinguish between at least two phases in Foucault's analysis of power: one which concentrates on 'discipline' and social control in the strict sense, and one called 'governmentality' which focuses on the inter-relationship between knowledge and power through which new categories of people are constituted and hence exposed to mechanisms of power (also called

'bio-politics' or 'bio-power'). Both go beyond a vision in which power is thought of in terms of what Foucault calls 'sovereignty' where a ruler would try to control place, people and resources for achieving power. Both (self-)discipline and bio-power are about how the object of power is part of the very mechanisms through which power is performed.

In the earlier days, Foucault's studies have been regularly concerned with the construction and then administration of the 'abnormal', be it the mad, the sick, the criminal, the sexually 'perverted'.[14] Although he did concentrate on the aspects of discipline this could entail, clearly this research programme is closely connected to his research on 'governmentality' by being 'performative'. By this, I mean that particularity of the social world where the categories we use to describe it can come to interact with that which is described. Such 'looping' or 'interaction-effect' (Hacking, 1999) appears, for instance, in self-fulfilling prophesies or, on the individual level, on the effects 'naming' has on self-understanding and identity. It can be only a question of time before a person considered mad reflects on this social mirror-image and may start interpreting his/her behaviour as as being indeed 'mad'. If this categorization is eventually internalized by that person, thus becoming his/her new self-understanding, interests and behaviour adapt and may end up conforming to the initial external categorization.

It is this interaction of categories of knowledge and the individual, always shifting and historically constituted, which is a prominent part also in the study of governmentality. The classical definition stems from an introductory lecture to the Annual Lecture series 1977–1978, where in the first (and for the present purpose most important) understanding, governmentality is '[t]he ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target (the) population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security' (Foucault, 2004, p. 111). In fact, Foucault argues that the present form of power in the West is relatively recent; he identifies it in the moment 'population' was constituted as an object of order – by being an object of study – and vice versa. As he writes:

> It is an incessant play between the techniques of power and their object in which 'population' and its specific phenomena were cut out (of) the real and became constituted as fields of reality. And it is on the basis of this constitution of population as *pendant* [*corrélatif*] to the techniques of power that we have seen a whole series of

> domains of objects become open for possible knowledge [*savoirs possibles*]. And, in turn, it is because this new knowledge [savoirs] keeps on carving out new objects that the 'population' has been able to constitute itself, continue itself, preserve itself as the privileged pendant of modern mechanisms of power.
>
> (Foucault, 2004, pp. 80–81, my translation)

This approach to governance takes off from earlier studies on the rise of *Policeywissenschaft* (police science) and 'stat(e)'istics dating from the 18th century. Whereas the first referred to the study of the internal order which included law, administration and political economy (understood in the traditional way), statistics became the preferred technique. That particular technique was based on the increasing invention of categories with which to delimit ever more new parts of that society, so as to better administer ('police' in the old sense) them.

In Foucault's hands, such an approach is not just disciplinary. Indeed, many of these new statistical devices were meant to improve the life conditions of the population. And so, as Foucault puts it, 'government has as its purpose not the act of government itself, but the welfare of the population, the improvement of its conditions, the increase of its wealth, longevity, health etc.' (Foucault, 1991, p. 100). But through these very devices an ever-more intricate system of administering, monitoring, policing took shape to which individuals were subjected. 'Subjected' in a strong sense, that is, since the categories according to which public health or political economy would devise 'correct' behaviour worked through the subject itself becoming a vector of those distinctions, adapting behaviour and self-understanding to it. It is not difficult to see an updated version of Weber's 'Iron Cage' in which, similarly, the modern rationalization of government, allowing a more efficient and wide-ranging administration, is accompanied by a multiplicity of new ties. Except now the subject is part and parcel of this understanding of power; indeed, the power is not residing in the 'administration' or in the Cage, but in the co-constitutive relation between categories of knowledge and techniques of administration (savoir), as well as administered subjects.

A good example of the application in IR has to do with 'governance' in a twofold sense, for it is about the way standards of 'good governance' interact with those who are subjected to it (see e.g. Löwenheim, 2008). It is an almost paradigmatic application, in that public policy findings of so-defined good governance have become policy indicators for international organizations and states alike in their aid and other

policies: the study of governmentality thus shows how expert knowledge on governance is part and parcel of global governance.[15] But these standards are also 'identifiers' since they distinguish between those who are part of the truly civilized world and those who are not. Being at the forefront of implemented indirect liberal rule has become a marker for gaining status as civilized and acceptable to the community of great powers.[16] Moreover, they 'responsibilize' the subjected nations for their own fate and eventually push to comply even those who first did not want to abide to those standards – which only reinforces the existing mechanism. Consequently, the very findings of the public policy 'governance-as-steering' literature become themselves, in turn, intrinsic part of the evolving mechanisms of power to the extent that they are applied in political practice and interact with their objects.

Having so profoundly reorganized the thinking about order and governance, the question of agency and scope, with which other approaches have been characterized, appear now slightly misplaced. In fact, this approach refuses to think about agents first; rather, it starts from mainly impersonal processes that constitute both the scope of order and its agents. This vision of governance starts from the techniques and mechanisms, be they the political economy of populations, the constitution of insurance and risk management (*locus classicus*: Ewald, 1986) or indeed the self-policing of body and mind. Through the analysis of those rationalities of government, one can understand agency and scope in the first place.

Similarly, there is obviously not the same concern with the 'risks' of the diffusion of power. Rather than seeing it as a problem to be fixed for allowing efficient steering, governance as governmentality is actually based on a dispersion of power: the mechanisms of governance are directly connected to the diffusion of power. The question is not what the diffusion of power entails for governance; in a sense, the diffusion of power (as implied in governmentality) *is* governance.

Such a focus on modes and mechanisms problematizes governance differently. First, it does not assume a public realm (the state) and a private realm (civil society) as something given prior to analysis (as in liberalism). Indeed, it sees both realms as enmeshed; or, to put it differently, liberal rationalities of order have diffused into both. Firms have to comply with corporate social responsibility, the state apparatus to become efficient in terms of New Public Management. By inventing new indices of productivity, such neo-liberal practices constitute the public realm as a firm-like actor in the first place. And order is achieved through

ever new accounting devices which work through the very acceptance by subjects to be rendered 'accountable' in such a way.

Such a view breaks with the idea of a diffusion of power where private actors of all sorts would have picked up that power in a kind of global network. Foucauldian analysis of NGOs, for instance, insists that, rather than seeing in this global civil society an anti-power or new power, it is 'an expression of a change in governmentality by which civil society is redefined from a passive object of government to be acted upon . . . into an entity that is both an object and a subject of government' (Sending and Neumann, 2006, p. 658). Rather than assuming any zero-sum where power would move back and forth, an analysis of governmentality would concentrate on the new mechanisms through which (self-)regulated behaviour, order, is achieved. And here, NGOs are not necessarily a barrier to government, they are themselves, perhaps unwittingly, part of it (Lipschutz, 2005; Hynek, 2008; in a slightly less Foucauldian vein, see also Bartelson, 2006).

Second, the analysis moves towards a different problematization of power. This is no easy issue in Foucauldian analysis, for when power relations are ubiquitous, de-masking power loses its critical edge. Indeed, governmentality only functions through the positive will of subjects. Consequently, by concentrating on this aspect, which also avoids the conspiratorial bias of some earlier critical studies, the analysis easily overplays the role of 'productive' power, neglecting more traditional dominance, within a more general analysis of political order (Merlingen, 2006). Although Foucault is ambivalent on this, he clearly does allow different rationalities of government to co-exist. In this vein, Neumann and Sending propose seeing the central core of contemporary Foucauldian analysis of the global polity in the tension between an ever increasing indirect and liberal rule *and* direct policing, 'governing less' and 'governing more', which turn out to be interrelated modes of governance of the wider political order. In the establishment of 'global best practices' government clearly operates through 'freedom'; in the discourse on global threats and risks, government as policing becomes prominent in the ever increasing capacity of surveillance.

And as in the Panopticum, where the life of prisoners in their cells is transparent to the guards while the latter cannot be seen, this transparency provokes a self-discipline which is based on individual choice, and yet stands also as continuous policing. The two are connected. For Neumann and Sending, liberal governmentality is a 'further developing' of these (policing) power techniques (Neumann and Sending, 2010,

p. 33). This has to do with the identity-providing mechanisms of the liberal order (see also Merlingen, 2006, p. 192). For, if subjects are not able to conform to, and perform, 'freely' the appropriate actions mandated by the liberal mode of governing – if, in other words, they are unable to govern themselves – then they are 'abnormal' and need to be helped, educated, re-educated, healed, locked up or thrown out. Hence policing within liberal governmentality is not central for deterrence, as a Hobbesian vision would have it, but for re-affirming the identity of the normal and for triggering processes of (liberal) normalization, voluntary and/or habitual if possible, imposed when necessary.

Given the inter-relation between the understanding of power and of politics, this redefinition of power in terms of governance as governmentality also affects politics which, according to Neumann and Sending, has to be understood in terms of the content of, and tensions between, different governmental rationalities. Indeed, as they see it, today's core of world politics is defined by the respective place indirect and direct forms of rule should play: 'Global politics is increasingly characterized by debates and struggles over what *type of governing* is seen as appropriate for different groups and phenomena.'[17]

This leads to a third difference in problematizing governance. With this definition of politics, the fourth problematique enters the scene, the content of governance. Or so, at least, it seems. But it is not self-evident. In fact, the whole analysis being driven by the problematique of modes/mechanisms seems to elude questions of normative substance. The 'common good' appears at best as an analytical category, but no subject of normative reflection in itself. If regime analysis seems to have almost evacuated the political debate about the content of governing by rendering it a technocratic question of maximizing collective choice, Foucauldian analysis seems to have diluted it in its historicism. Power can be a concept connected to an emancipatory ideal both at the macro-level ('freedom from') and micro-level ('autonomy'/'freedom to'). But if power is in principle ubiquitous, if it is disciplining while being productive, the entire debate about power and governance seems to stay normatively agnostic: it takes note of the way governing evolves, but it does not judge it.

Such a critique has been levelled at Foucauldian analysis, appearing to the more conservative or realist side as a form of 'relativism' and to the more critical analysts as 'post-ponism', where the normative question is always relegated after a further round of reflexivity.[18] This introduction cannot be the place to resolve this. Suffice it to say that it is always possible to reconstruct a certain normative commitment in Foucauldian

analysis. And even if Foucauldians often shy away, just like post-structuralists more generally, from playing the role of the self-anointed critical (and morally superior) conscience – which must appear to some as an odd combination of an ambition to intellectual superiority paired with an excess in reflexivity and self-criticism – a certain emancipatory ideal can easily be read into analyses of governmentality. It retains a critical stance towards the reduction of politics to technocracy, or the use of truth and knowledge for indices to normalize people and practices. But it cannot as easily rely on the Habermasian *Lebenswelt* or liberal civil society as the antidote against such tendencies, since Foucauldian analysis sees it not divorced from the 'system' or political power, but part of it. With the diffusion of liberal mechanisms of power comes also a rearticulation of how the productive parts of power can be harnessed for a less intrusive and normalizing political order.

## Conclusion and chapter outlines

This introduction aimed to clarify the central terms of the book's problematique, governance and diffusion of power. With regard to the first concept, it proposes that governance is thought about in terms of 'political order', whereby 'political' stands for anything affecting the 'public interest' or 'common good'. It distinguishes between two general approaches to the understanding of governance as either steering capacity or (indirect) rule, which, in turn, can be further divided into four main (!) approaches for conceptualizing international political order. Whereas approaches focusing on steering capacity tend to see power (and hence order) diluted, dispersed, if not disappearing, a focus on rule sees therein a re-articulation of a global political order which, at least for the Focauldian analysis, may well increase control. In order to assess the relationship between the diffusion of power and governance, I proposed four different problematiques of governance – agency, scope, modes/mechanisms, normative content – and showed how they are accounted for within such approaches. The following table may serve as a summary of the argument (Table 1.1).

The following chapters move from more steering-oriented approaches via the analysis of power structures in IPE to Foucauldian analyses of governmentality, starting and ending with a chapter on sovereignty.[19] In Chapter 2, Elke Krahmann examines the consequences of the diffusion of security governance functions among military and security companies in Europe and North America. She argues that it is in particular the distinct territorialities of commercial security provision

*Table 1.1* Approaches to governance and their problematiques

| | **Governance** | | | |
|---|---|---|---|---|
| | **As steering capacity** | | **As (indirect) rule** | |
| | **HST** | **Regime** | **IPE** | **Foucault** |
| Which concept of political order? | Hegemonic stability | (Interlocking) regimes | Structure(s) of domination | Governmentality |
| Which problematiques of governance prevalent? | Driven by agency | Driven by scope | Driven by scope, mechanisms and normative content | Driven by mode/ mechanisms |
| Which problematique of the diffusion of power for global governance? | The risk of no agency of order | Functional equivalents to agential order within new policy networks and issue areas and their accountability | Functional equivalents to agential order; domination and the provision of basic social values | Diffusion of power *is* global governance: relation between liberal governmentality and policing |

that contribute to challenging the traditional state-centric foundations of security governance in Western democracies and promote the reallocation of basic values.

Valbona Muzaka's analysis deals with the global International Property Rights (IPR) Regime, set in place by the Trade-Related Aspects of Intellectual Property Rights agreement from 1995 onwards. She argues that power has actually become more concentrated at the global level, as it is here that most binding IPR rules are negotiated. At the same time, a thick system of often incoherent norms and rules has developed, resulting in a regime that is fragmented and where different sources of authority exist and overlap. Hence, the governance of IPRs is better understood as a disorderly, conflictual and contested process rather than an orderly and effective steering arrangement.

Kathleen McNutt and Jeremy Rayner study the structure of transnational Virtual Policy Networks as a way to provide some insight into the new modes of coordination that explain the rise and persistence of global governance arrangements. Mapping the nodal structure of global forest governance networks, they show how familiar policy strategies, such as seeking and exploiting nodality, are likely to be deployed in

new ways, creating new relationships between traditional actors. Power is not really diffused, but exercised in new ways.

Jean-Christophe Graz and Andreas Nölke develop their earlier studies on 'transnational private governance' characterized by the privatization of rule-making and enforcement which goes much further than traditional lobbying by allowing private actors an active role in regulation itself. While conventional analyses tend to highlight the newness and the innovative character of these forms of governance, they question this view by emphasizing limitations in two regards. The limits to transnational private governance refer first to the degree to which this phenomenon is really private, transnationalized and confined to governance per se. Second, the normative shortcomings of transnational private governance clearly hinder its ability to embody procedural innovation in policy processes and to solve large socio-economic concerns.

Susan Park shows how private financier authority extends beyond market ordering mechanisms to global environmental governance. While this fits a broader trend towards 'market governance' of the environment, the chapter provides original insight into the activities of the United Nations Environment Programme Finance Initiative (UNEP-FI). This Initiative creates environmental knowledge from the vantage point of the finance industry rather than meeting environmental governance codes established by states, international organizations or NGOs. The forum is a unique in spreading ideas among financial actors, emanating from private sector banks outwards. The chapter argues that the UNEP-FI is crucial to understanding how the industry creates knowledge about sustainability, revealing new ways of governing the global environment through private financier authority.

With Jakob Vestergaard's chapter, the analysis stays with international finance, but moves towards a Foucauldian approach of disciplinary power. And hence, far from seeing an increasingly more spontaneous and decentralized order, his analysis of various mechanisms such as standardization and 'visibilization' shows that market economies have never experienced intervention in such manifold and totalizing ways.

Rahel Kunz analyses the underlying governing rationality and techniques associated with the 'discovery' of the diaspora as a civil society actor in the international arena. For her this 'discovery' is indicative of a shift in the rationality for governing expatriate populations from developmentalist towards neo-liberal diaspora governing. The latter entails the governing *of* diasporas as objects, and the governing *through* and *with* diasporas as political subjects, as well as expatriate

self-governing. The shift towards neo-liberal governmentality involves the responsibilization and disciplining of the diaspora, while at the same time opening space for resistance and empowerment. Thus, this 'discovery' of the diaspora as an international actor is not just a transfer of power from the state to an already existing civil society actor. Rather, neo-liberal diaspora governing actually creates new civil society actors, actively mobilizes them in various fields and ways, and transforms state-diaspora and more broadly state-civil society relations, redrawing public-private boundaries.

Tanja Aalberts reconceptualizes governance and sovereignty through a Foucauldian analysis of governmentality as (productive) power. Contrary to the familiar framing of governance as alternative to and replacement of (sovereign) government, sovereignty itself must be understood as a form of social rule and object of political ordering. This also enables a move beyond the deadlock debate of sovereignty as something to remain forever or about to disappear, towards a more dynamic understanding of the institution of sovereignty as a particular mode of governance that is transformed or reconstituted within changing circumstances. The diffusion of power in the emerging governance structures then entails not so much a dilution of sovereignty as its reconfiguration within the international political order.

In conclusion, Iver Neumann finds a minimal consensus among the chapters, in that they agree that a growing number of political processes are becoming global in character. The number of agents that attempt to govern these processes also seems to be growing. To Neumann, the existence of governing agents and governance adds up to a global polity in the making.

## Notes

1. This chapter is based on the conceptual paper for the European Consortium for Political Research's joint workshop in Lisbon from which this volume derives, and a paper entitled 'International community and global governance: which governance? which community?', presented at the KIC International Conference on 'International Community and Global Governance', Kyung Hee University, Seoul, 9–10 November 2009, and, in slightly revised form, as the keynote address to the annual meeting of the Brazilian International Relations Association (ABRI), São Paolo, 20 July 2011. For comments and suggestions, I am grateful to all participants of the Lisbon workshop (then and later), Friedrich Kratochwil, Anna Leander, Nick Onuf, Hannes Peltonen, and two anonymous referees.
2. For an argument which insists that regime theory does not need to be as narrow as many of its defenders present it, see Cutler (2002, pp. 27–28).

3. Despite some points of similarity between post-structuralist/Foucauldian and Schmittian approaches to politics, this clearly distinguishes them, since, for Schmitt, order is ultimately understood in terms of the sovereign right to the exceptional decision. It looks at order from the point of view of the orderer.
4. For such an institutionalist approach and overview of different understandings of 'governance' in public policy, international relations and comparative politics, see Kjær (2004). Having tied the definition of governance to institutionalism, more narrowly defined, her otherwise cogent survey must leave out or neglect approaches which focus on constitutive rules or impersonal rule, such as social constructivism and Foucault-inspired analyses.
5. It is slightly odd that the editors of *Who governs the globe?* write that 'analysts . . . have not made the agents in this process [governance] central to their analysis' (Avant et al., 2010b, p. 1). They surely did. In fact, for most analyses, this has been the main problematique, unless one defines studies of global governance in an unduly restricted manner.
6. It should be noted that classical realists were analysing the way empires could be seen safeguarding values and offering benefits. See e.g. Wight (1979 [1946], p. 289).
7. Susan Strange has repeatedly singled out this underlying political argument to press for burden-sharing within HST (but also within regime theory). See Strange (1982a, 1987).
8. Obviously, French government leaders thought this was the only way to discipline a US which used the international monetary system as if it were a national one (Aron, 1984), leaving all adjustments to the other countries. Already in the 1960s this was dubbed an 'exorbitant privilege' (of the US), a term attributed to either Valéry Giscard d'Estaing, then the French Minister of Finance, the French President Général de Gaulle, or his favourite economist Jacques Rueff.
9. See this concern in for example Gilpin (1975), Krasner (1978), and Calleo (1982).
10. For the early opener of that research tradition, see Vernon (1971) and Keohane and Nye (1972). For the programmatic statement of regime theory, see Krasner (1983) and later Kohler-Koch (1989). For an excellent discussion of the central tenets of its different sub-schools, see Hasenclever et al. (1997). For a recent statement on networks, see Kahler (2009).
11. This is the main line of the 'complex interdependence model' in Keohane and Nye (1977).
12. This is crucial even in Keohane's mix of regime and HST, where he argues that hegemons may well be most useful to set up a regime, but that its functioning (i.e. also its steering capacity) can survive the hegemon. See Keohane (1984).
13. This vision is most comprehensively laid out in Strange (1988b).
14. This follows the series of his major book publications, that is, *The History of Madness*, *The Birth of the Clinic, Discipline and Punish* and *the History of Sexuality* (mainly Volume 1).
15. There are several Foucauldian analyses in this tradition of rule by standardization/the power of standards, as for instance, on the practices of 'benchmarking' in Triantafillou (2004) and Fougner (2008). For a

non-Foucauldian attempt to account for the power of standardization, see Grewal (2008).
16. For an analysis of Russia's (and the Soviet) repeated exclusion on these terms, see Neumann (2008).
17. For the definition of politics, see Neumann and Sending (2010, p. 64). For the quote, see p. 3, original emphasis.
18. The expression is William Connelly's (1989, p. 336; 1991, pp. 55–56.) For my own take on the ethical project underlying post-structuralism, see Guzzini (1997).
19. The following introduction of the volume's chapters relies often on direct quotes from the chapters themselves. I have omitted the quotation marks.

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# 2

# Private Military and Security Companies, Territoriality and the Transformation of Western Security Governance

*Elke Krahmann*

## Introduction

The field of security governance holds a special place within the context of the debate over the diffusion of power from state to non-state actors, from national to international authorities and from governments to markets in Western democracies. Not only has the provision of the 'public good' security been considered one of the main functions of government, but also it has played a major role in justifying the centralization of power and authority within and by the nation-state (Leander, 2006; Krahmann, 2010). The contemporary proliferation of private military and security companies, that is, companies that sell armed and non-armed security services to public and private customers, poses a particular challenge to state-centric notions of national and global governance. Of course, commercial security providers are not new. Businesses have always played a role in national and international security, whether as mercenaries, armaments producers or logistics suppliers in major conflicts. The increasingly global scale of the private military and security industry, its functional expansion into areas previously considered to be 'inherently governmental' as well as their growing use by private individuals and business customers, however, suggest a significant transformation in security governance since the 'golden age' of the Western nation-state in the mid-twentieth century (Leibfried et al., 2008; also Hogan, 2000; Edgerton, 2006). Notably, 80 per cent of their customers are individuals and corporations, suggesting significant private power over the provision of security.

This chapter seeks to examine the consequences of the diffusion of security governance functions among military and security companies in Europe and North America. It focuses specifically on two problematiques identified in the introduction to this volume. The first is the changing scope of security governance because commercial security provision shifts the focus from the territory of the nation-state to sub-national and international levels, and decision-making power from state to non-state actors. The second problematique is the implications of this diffusion for the norms and values underlying security governance. This chapter argues that it is in particular the distinct territorialities of commercial security provision that contribute to challenging the traditional state-centric foundations of security governance in Western democracies and promote the reallocation of basic values.

To analyse the consequences of the growing role of military and security contractors, this chapter is structured into four parts. The first part outlines how the concept of territoriality in the ideal of the sovereign nation-state has provided the foundation for the mechanisms and values that defined Western security governance during the mid-twentieth century. The second part analyses empirically how commercial security providers are in the process of changing the territorial foundations of national and international security, with a particular focus on Europe and North America. As a consequence, the chapter contends in the third part that the commercialization of security affects four values which have been central to the understanding of Western security governance in the past century:

1. the state monopoly on the legitimate use of force;
2. the notion that security relates to communities rather than individuals;
3. the rule of law;
4. the democratic control over the provision of security.

The chapter concludes that the diffusion of power to commercial security providers is contributing to transforming the practical and normative foundations of national and global security governance.

## Territoriality and the state-centric order

In order to analyse the implications of the commercialization of security, it is first necessary to understand the characteristics of the state-centric political order and the practices and norms which have emerged on its

foundations. Territoriality has been one of the central concepts of this order. Territoriality has provided the framework for the notion that government should proceed exclusively within the physical borders of a (nation-)state and that citizens, their rights and obligations are defined by being born or living within these borders. Moreover, the concept of territorial sovereignty has led to the assertion that states must not interfere in the government of other states and that the government outside their territorial boundaries is to be decided only by states which are to be treated as formally equal. In sum, the state-centric order is premised on 'exclusive control over territory, non-interference, and equality among states' (Fitzpatrick, 2002, p. 304). As these ideals spread slowly across Europe and North America after the signing of the Treaty of Westphalia in 1648, the territorial state became a central unit of reference for a normative order embodied in national and international practices and law (Zacher, 2001). In practice, of course, the state-centric political order has always had its limitations. According to Stephen D. Krasner (1995/1996), the territorial sovereignty of the nation-state has been variously compromised through conventions, contracting, coercion and imposition. Nevertheless, the *ideal* of a territorial political order based on sovereign nation-states has been strong, reaching its fullest expression among Western democracies during the 20th century. State-centrism has shaped political practice and its underlying normative order.

With regard to the provision of security, four normative values and practices have been particularly closely linked to the territorial state: the norm against the private use of force, the values of community, the rule of law and the democratic control of security. While the first two concern primarily the provision of security, the second two apply to the public control of the use of armed force. Within the order of territorial states, the norm against private force has taken the shape of the state monopoly on the legitimate use of violence (Weber, 1994, pp. 310–311). This norm, which prohibits the private use of force in all circumstances but immediate self-defence, has two primary aims with regard to security. The first is the elimination of intentional physical violence among the members of a territorially circumscribed community. The second is the avoidance of international conflict between individuals from different territorial communities. In both cases, the 'natural right' to employ force is deferred to the state in return for protection against internal and external aggressors.

The second practice and value establishes a link between security and a territorial social community, represented by the ideal of the nation-state. The norm builds on the belief that humans are inherently social

beings and that many human needs can only be satisfied collectively. For the provision of security it means that, while individuals can protect themselves through self-defence, the fear of aggression from other human beings would severely limit the fulfilment of many inherently social needs. The territorial nation-state serves to facilitate the fulfilment of these needs through two measures. One is the creation of territorial zones of peace in which citizens can create a social community. The second concerns the collectivization of resources and efforts for the protection of the community against external threats from beyond its territorial borders.

The order based on the territorial state has not only provided the framework for contemporary norms and practices regarding the provision of security, it has also shaped values regarding the control of security governance. Specifically, it has been the foundation of two modern values: the rule of law and democracy. According to Joseph Raz (cited in O'Donnell, 2004, p. 35) the rule of law is defined by several characteristics:

1. All laws should be prospective, open and clear;
2. Laws should be relatively stable;
3. The making of particular laws . . . must be guided by open, stable, clear, and general rules;
4. The independence of the judiciary must be guaranteed;
5. The principles of natural justice must be observed (i.e., open and fair hearing and absence of bias);
6. The courts should have review powers . . . to ensure conformity with the rule of law;
7. The courts should be easily accessible;
8. The discretion of crime-preventing agencies should not be allowed to pervert the law.

Guillermo O'Donnell adds that 'truly *democratic* rule of law . . . ensures political rights, civil liberties, and mechanisms of accountability which in turn affirm the political equality of all citizens and constrain the potential abuses of state power' (O'Donnell, 2004, p. 32).

Democracy, in turn, is defined as the self-government of the citizens, coming from the Greek words 'demos' for people or citizens, and 'kratos' for rule. The term demos also referred to the 'village' where males enrolled for participation in ancient Athenian self-rule, giving an example of a territorial notion of democracy well before modern times (Blackwell, 2003). Territoriality plays a central role for both

contemporary rule of law and modern democracy. Territoriality not only sets the boundaries for the application of both values, it also ensures through the ideal of the democratic rule of law that the two spheres are identical. Only where all the citizens who are ruled by the law also have the opportunity to participate in defining the law can we speak of democratic self-rule. Moreover, the values of democracy and the rule of law are linked in that the rule of law should safeguard the self-rule of the citizens.

## The territoriality of commercial security

The proliferation of security companies directly and indirectly affects the practices, values and norms of Western security governance by transforming the territorial conditions for its provision. This section outlines the scope of the commercialization of security at two levels across Europe and North America: domestic security services and international security governance.

The growth of domestic security services across Europe and North America since the 1970s has received little public or media attention. Few citizens and politicians are aware of the scale to which security contractors dominate the provision of subnational security today. As Table 2.1 shows, the number of security contractors is nearly twice as large as that of public police forces in the UK, Poland, the USA and Turkey, and two thirds the size of the state police in France and Germany. Moreover, the USA, Poland, Germany, Turkey and Spain permit the carrying of arms by contract security guards. Expressly prohibited is the use of arms only in the UK and France, although the latter grants exceptions for transport security services. About 80 per cent of

*Table 2.1* Domestic security providers 2007–2008

| Country | Public police | Security contractors | Armed security contractors | Ratio police/ security contractors |
|---|---|---|---|---|
| UK | 141,398 | 250,000 | – | 0.6 |
| Poland | 100,000 | 165,000 | No data | 0.6 |
| USA | 861,000 | 1,200,000 | No data | 0.7 |
| Turkey | 145,000 | 218,660 | 35,263 | 0.7 |
| Germany | 250,000 | 177,000 | 10,000 | 1.4 |
| France | 250,000 | 159,000 | – | 1.6 |
| Spain | 223,000 | 92,000 | 20,000 | 2.4 |

CoESS (2008), US Bureau of Labor Statistics (2008).

commercial security services are directly sold to private citizens and corporations, effectively competing with the sovereign nation-state as the primary supplier of security within its territorial borders.

Security companies also directly affect the territorial provision of security. The rise of commercially policed spaces in Europe and North America illustrates this development. Foremost is the proliferation of mass private property, including gated communities, shopping malls, business parks and amusement districts (Shearing and Stenning, 1983; Blakely and Snyder, 1997; Wilson-Doenges, 2000; Atkinson and Blandy, 2005; Monahan, 2006). According to the Community Associations Institute (2009), nearly 60 million US citizens, about 20 per cent of the total population, lived in self-governed residences in 2008, compared to 45 million in 2000. More than 17 million housing units in the USA are physically protected from their neighbourhood through gates, walls, fences and commercial security services (US Census Bureau, 2008, p. 66). Also in the UK, the number of gated communities has been increasing. In 2004, Atkinson and Flint counted 'around 1,000 gated communities in England', many of which were located in the wealthy Southeast (Atkinson and Flint, 2004, p. 879). Smaller increases in commercially secured residences have been noted in France, Turkey and Spain (Glasze, 2005, p. 222).

Despite these numbers, the pervasiveness of 'private' security territories is often underestimated because gated communities are only one example of mass private properties. Beyond private housing and residential areas, also corporations and public institutions (such as hospitals and universities) are increasingly hiring commercial security services to protect their premises. The commercial patrolling of shopping malls, university precincts, train stations, airports and office buildings has become so commonplace in Western industrialized countries that people hardly take note of it anymore. The scale of commercial security guarding is revealed by statistics from the UK which suggest that the turnover of this service segment has more than quadrupled in the past 15 years (Figure 2.1).

The commercial protection of formerly public spaces has contributed to the current boom of the sector. The most extreme case has been the 'privatization' of inner city districts and public streets in the UK and the USA. In the UK, this has taken two forms. One has been the outsourcing of state responsibility for the policing of streets with a high density of bars and clubs to these establishments. Another has been the private lease of public spaces such as London's Chinatown and 42 acres in Liverpool's city centre by commercial developers (Kingsnorth, 2008).

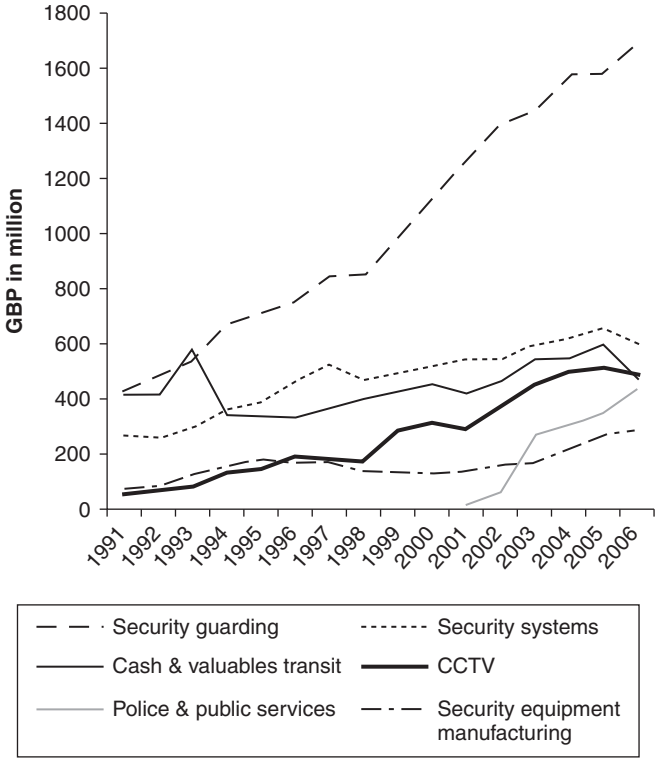


*Figure 2.1* British security industry turnover

In both areas citizens retain public rights of way, but security is provided jointly by privately employed contract security guards and the public police.

While the majority of security companies work within the territorial boundaries of their headquartered states, a growing number of firms operate internationally (Table 2.2). Often they work for states and their agencies, in particular in international interventions. However, increasingly also non-state actors, such as transnational corporations and non-governmental organizations (NGOs) are employing international security companies to protect their operations abroad.

The global territorial expansion of security firms occurs in two main dimensions. Firstly, a growing number of security companies have become transnational corporations through the merger with or acquisition of national security firms and the opening of offices around

*Table 2.2* International security companies

| Company | Subsidiaries, offices and operations | Employees |
|---|---|---|
| G4S (incl. ArmorGroup, Wackenhut, Ronco) | Subsidiaries in 38 countries; operations in 125 countries | 625,000 |
| Securitas | Subsidiaries or operations in 49 countries | 295,000 |
| CSC (incl. DynCorp) | Offices in 35 countries and operations in more than 90 countries | 97,000 |
| L-3 (incl. MPRI, Titan) | Offices in 8 countries | 63,000 |
| Guardsmark | 150 offices worldwide | 17,000 |
| CACI | More than 120 offices in North America and Europe | 14,300 |
| Control Risks | 34 offices worldwide | No data |
| The Risk Advisory Group | Offices in US, UK, Russia, Saudi Arabia, Dubai and operations in 100 countries | No data |
| Olive Group | 11 offices worldwide and operations in 30 countries | No data |

G4S (2012); Securitas (2012); CSC (2012); L-3 Communications (2011); Guardsmark (2011); CACI (2012); Control Risks (2012a); The Risk Advisory Group (2012); Olive Group (2012).

the globe. Key examples are G4S and Securitas. G4S has subsidiaries in 38 countries, provides security in 125 states and counts a total of 625,000 employees worldwide. Securitas has subsidiaries or operations in 49 countries with a total staff of about 295,000. Securitas has a global market share of 12 per cent. Other security companies such as CSC, L-3, Guardsmark and CACI from the USA and Control Risks, The Risk Advisory Group and Olive from the UK have expanded their operations through regional or national offices in Europe, Asia, the Middle East and Latin America.

Secondly, as illustrated by Table 2.3, the use of military contractors and commercial security guards has increased massively in international military and humanitarian interventions as well as by transnational corporations operating in regions of conflict or failed states. In 2009, the US military alone employed 155,000 military and security contractors in Iraq, about 25,000–30,000 of whom were armed. In addition, an estimated 48,000 commercial security guards worked for reconstruction firms, international organizations, NGOs and private businesses in Iraq. Also in Afghanistan, international military and security contractors played a major role in the provision of security services with 30,000 US military contractors and about 10,000 privately hired security staff.

*Table 2.3* International interventions

| Country | Soldiers (foreign) | Military support contractors (US only) | Security contractors | Ratio soldiers/ contractors |
|---|---|---|---|---|
| Iraq | 152,000 | 155,000 | 48,000 | 0.7 |
| Afghanistan | 53,000 | 30,000 | 10,000 | 1.3 |

A comparison with previous interventions illustrates the growth of the commercial security sector. According to US government figures, 'the ratio of about one contractor employee for every member of the U.S. armed forces in the Iraq theatre is at least 2.5 times higher than that ratio during any other major U.S. conflict' (CBO, 2008, p. 1).

The services sold on the global security market cover 'every aspect of security – from corporate operations, commercial risk and foreign investment to counter-terrorism, close protection and support to governments' (Aegis, 2011). In some instances international security companies directly replace or compete with local police and national armed forces. This occurs predominantly in weak or failed states where the latter are unable to maintain public security such as in Angola, Algeria, Nigeria and the Democratic Republic of Congo. State agencies in these countries might even be seen as a cause of insecurity due to 'endemic state corruption, personal or corporate blackmail or straight theft' against which international security firms have to protect their international clients (Control Risks, 2012b). However, also in industrialized countries international security firms are supplying armed guards and perimeter protection. According to these firms, international terrorism and organized crime affect international corporations, major banking, financial and manufacturing companies, governments and other multi-national organizations around the world. In addition to armed protection, global security firms offer terrorist damage services, project security management and consultancy, security design and architecture, security audits and reviews, supply-chain security, executive protection, event security, sports event security management, technical surveillance countermeasures, whistleblowing services and forensics.

## Challenging state-centric orders

The commercialization of security is neither new nor unwanted. In most cases, Western states have accepted, even promoted, the transfer of

security functions to commercial contractors. However, the consequences of the changing practices of domestic and international security provision have been little examined and understood by these governments. This section argues that commercial security changes the territoriality of contemporary security governance and, thus, one of the foundations of traditional Western state-centric political and normative orders. The following examines four aspects of this order: the state monopoly on violence, political community, rule of law and democracy.

**State monopoly on violence**

One of the most important consequences of the growth of the security industry is the erosion of the monopoly of the territorial state on the legitimate use of violence and with it, the norm against the private application of force in national and international affairs. Although even among Western states this monopoly has never been complete, the proliferation of commercial security guards and protection since the 1970s indicates a marked reversal of the progressive centralization of the control of armed force by Western states over the past three centuries (Thomson, 1994). This reversal also applies to the norm against mercenarism which emerged concurrently with the state monopoly on violence (Percy, 2007; Krahmann, 2012). The theoretical and normative implications include the possibility that the state is no longer the sole or even primary legitimate provider of security within its national territory and in international relations (Loader and Walker, 2001, p. 10).

Within national territories in Europe and North America, the expansion of the security industry has two major effects on the state monopoly on violence. Firstly, the availability of commercial security services challenges the role and ideal of the state as the supplier of public security (Andreas and Price, 2001, p. 35; Bislev, 2004, p. 282). Secondly, the proliferation of armed security guards reverses the trend towards eliminating the use of physical violence among the peoples living within the territorial borders of a state. Both aspects are inherently related in that public security or, more correctly, public peace rests on the prohibition of the use of armed force by private citizens. This prohibition and the resulting expectation of a peaceful resolution of conflicts are necessary to create a space in which citizens dare to engage in social exchange, including communication and trade. If all citizens complied with this prohibition, the state and its security agencies would be unnecessary. However, a small minority does not. The state monopoly on the use of violence to enforce public security is the logical consequence.

It maintains a ban on private force and at the same time serves to protect citizens against single individuals who disregard this ban.

Commercial and privately contracted security services challenge this practice with serious consequences for domestic security. Foremost, they create new subnational territories of security and insecurity. By protecting paying customers in shopping malls and gated communities, commercial security guards produce private zones of security, while displacing crime to neighbouring public spaces (Atkinson and Blandy, 2005, p. 180). Both contribute to undermining citizens' expectation of non-violence and increase their fear of public areas. As a result, particular wealthy citizens are withdrawing from these spaces and wider social interaction (Monahan, 2006, p. 173). Decreased social contact with citizens from a broad range of cultural and socio-economic backgrounds in turn facilitates fear of crime. British residents of gated communities have been observed to regard 'the surrounding neighbourhoods as crime-prone localities, despite the fact that they had very low crime rates' (Atkinson and Flint, 2004, p. 879). Moreover, commercial security features such as gates, fences and barriers can hinder public security provision in these areas because they restrict police access to private territories (Atkinson and Flint, 2004, p. 882).

In international relations, the state monopoly on the legitimate use of force has aimed to avoid armed conflict between individuals from different territorial communities. Instead the citizens' natural right to employ force is deferred to the state in return for protection against extra-territorial aggressors. The international monopoly of the state on the use of armed force has never been as successfully implemented as that within its national borders. However, the ideal of the territorially sovereign state and the prohibition against the transnational use of military force by non-state actors has been central in global affairs. It has reached its fullest expression in the Charter of the United Nations (UN) and the international laws of conflict of the 20th century. According to the UN Charter (1945) states are the 'original members' of the international community responsible for peace and security, and the Charter expressly recognizes the territorial sovereignty of its member states and prohibits foreign intervention within their domestic jurisdictions. Other laws supporting the restriction on the private use of violence in international relations have included the Geneva Conventions, which grant national armed forces special status and protection, and the UN and African Union conventions against mercenarism (Doswald-Beck, 2007). The state monopoly on the use of armed force has thus facilitated a decline in the number of inter-state wars since the end of the Second

World War. It has also delimited extra-state armed conflicts, such as conflicts between a state and a non-state group outside its territory, since 1975 (Gleditsch et al., 2002, p. 624).

The rise of a global security industry challenges the international monopoly of the state on the use of armed force in four ways. Firstly, commercial security providers offer alternative protection against external security threats. They particularly supply safeguards against the perceived 'new' threats such as international terrorism and crime. In the marketing of these companies, public security measures need to be complemented by private, that is, commercial, services because the new threats target individuals rather than national borders, thus overstretching state security agencies (Krahmann, 2011). The security industry even actively suggests that state police and national militaries are incapable of dealing effectively with the new types of transnational security threats. Indeed, in some cases states themselves encourage private citizens and businesses to hire commercial security services against these threats (Financial Times, 2005).

Secondly, security firms have become central to permitting international private actors such as multinational corporations, NGOs and international organizations to operate in countries where there is a lack of public security or where state security forces are corrupt. Although this development has been generally viewed in a positive light, it presents another challenge to the state monopoly on violence which requires further consideration (Fuchs, 2007). Rather than relying on local governments or multinational armed forces to resolve security issues, international security companies have developed capabilities and expertise which have allowed mostly Western businesses, charities and organizations to become independent of state security providers. Increasing globalization and the search for scarce natural resources have raised the demand for such services from multinational businesses. One example is the private supply of security for oil and gas extracting corporations in Nigeria. In 2007, there were 'between 1,500 and 2,000 private security companies (PSCs) operating in Nigeria, employing in excess of 100,000 people' (Abrahamsen and Williams, 2007). Major international security firms in Nigeria include G4S's Outsourcing Services Ltd, Control Risks and ArmorGroup. Another example is the use of security firms by NGOs. While many NGOs are reluctant to admit to hiring commercial security guards, empirical evidence of the growing reliance of NGOs on contracted security guards is mounting (Spearin, 2001, 2008; Cockayne, 2006). The intermeshing of security and development has been one factor that has led NGOs to take more 'proactive' stances towards the

provision of aid in conflict regions. Security firms use the moral dilemmas of NGOs to promote their services. As Control Risks (2012c) writes: 'Combating the increasing risks faced by aid workers across the globe is a difficult balancing act: too much overt security and aid workers risk being associated with armed forces, too little and an organisation's duty of care can be questioned.'

Thirdly, global security firms, such as the now-defunct Executive Outcomes and Sandline International, have supplied international help in internal conflicts (Howe, 1998; Francis, 1999; Aning, 2001). In 1995, for instance, the Sierra Leonean government hired Executive Outcomes for $35 million to support its poorly trained national armed forces in the conflict with the Revolutionary United Front (Francis, 1999; Cleaver, 2000). The company's initial success, however, was short lived. Only five months later, the military of Sierra Leone aligned itself with the revolutionaries and overthrew the government. To regain power the ousted government brought in Sandline International which (in addition to Economic Community of West African States Monitoring Group [ECOMOG] troops) facilitated its return to power in February 1998.

Fourthly, international security companies support state police and armed forces in international interventions. While contractors have always reinforced national militaries in major inter-state wars, the post-Cold War era has seen the emergence of military contracting for international peacekeeping and peacemaking missions (CBO, 2008, p. 13). In fact, some companies such as Blackwater have claimed that they would be able to supply peacekeeping troops for an international intervention in Darfur if the international community could agree on hiring them (Washington Times, 2006). As Table 2.3 has indicated, however, so far the largest demand comes from states participating in multinational military operations which are not sustainable in terms of scope and duration without the support of security contractors.

**Community**

The commercialization, privatization and deterritorialization of security also affect the value, norm and system of national and international security communities. Specifically, the market in security services contrasts the provision of security from a collective good supplied to a community of citizens living within a national territory with a notion of security as an individual and exclusive property. Whereas the state-centric territorial order led to the predominant conception of security as related to the protection of national borders and everybody living within them, the commercialization of security has gone hand in hand

with normative and practical shifts towards individual security. Mostly, this turn from national borders and military security concerns towards the survival of individuals and groups has been perceived as progressive. However, it has also some negative implications (Paris, 2001; McDonald, 2002). In particular, an individualized conception and provision of security threatens the norm of security as a collective good as well as the coherence and perpetuation of existing security communities at the national and international levels.

In domestic affairs, the commercialization of security contributes to the erosion of the norm of a national security community embodied in the territorial nation-state through three major developments. Firstly, the marketization of security leads to the creation of subnational 'security communities' based not on citizenship, but on the ability to pay for commercial security services. Gated communities are the direct illustration of these new types of 'security communities'. Commercially protected corporate spaces, shopping malls and entertainment centres create different kinds of security communities where financial prowess determines membership. Private corporations not only obtain contract security for their assets, but also for their employees. Entry to shopping malls and entertainment parks depends upon the ability of citizens to act as consumers within commercially secured 'public' private spaces. What differentiates private security communities from those of the state are the lack of social and political cohesion and the absence of a collective sense of identity and mutual responsibility. Declining notions of community are characteristic of gated communities where residents of high-income communities have a significantly lower sense of community than non-gated housing precincts (Wilson-Doenges, 2000, p. 605). Gated communities are also perceived as a 'process of exclusion and distinction' by the residents of neighbouring housing areas (Atkinson and Flint, 2004, p. 883). Security firms exacerbate the division between these private security communities and non-members by being responsible exclusively to their clients (Joh, 2004, p. 90). In short, the commercialization of security contributes to eroding the norms, values and practices that link between territorial citizenship, national community and security, and replaces it with commercial status and transactions.

Secondly, the commercialization of security not only leads to the formation of new 'private' security communities, but also to the individualization of security. One development questioning the concept and practice of security communities is the assertion that security risks are individual rather than collective. Security firms contribute to this development through marketing strategies that emphasize personal and

corporate differences with regards to the exposure and vulnerability to particular security threats. According to these marketing strategies contemporary security threats are not collective, but personal, requiring 'bespoke Security Service tailored to your individual needs and requirements' which only commercial security contractors can supply (Golden Crown Security, 2012). In fact, the assertion that clients' security needs are distinct is one of the most widely-found statements on security firms' websites (Allander Security, 2012; Britsafe Security, 2012; Danhouse Security, 2012; Elite Protection, 2012). With the conception that security is related to individuals rather than communities comes the responsibilization of consumers with regard to their personal or corporate safety. Security companies present this responsibility often as an issue of personal or corporate governance and duty of care (Octaga Security Services, 2012). According to Control Risks (2012d), 'Expecting the unexpected has become a corporate responsibility'. Even Western states seem to imply an increased responsibility of citizens and corporations to protect themselves (Mythen and Walklate, 2006, p. 134; O'Malley, 2006, p. 49).

Thirdly, by suggesting that security is best provided at the individual or corporate level, the commercialization of security encourages a declining commitment of citizens to personally participate in or finance collective public security measures. This development has been most extensive in the USA where 'issues of secession and tax withdrawal become a problem' due to the rise of gated communities and mass private properties (Webster et al., 2002, p. 317). But also in Europe, an emerging disconnect between security and the national territorial community can be observed in trends such as the growing demand for commercial security services and the dissatisfaction with public police despite decreasing crime rates.

In international affairs, the impact of the global security industry on national and international security communities can be noted in two main contexts. One has been the impact of international security firms on national security communities. In terms of social and political cohesion, collective identity and mutual responsibility, the greatest effect of international commercial security provision has been on developing and failed states. In these countries, security firms have allowed multinational corporations, international organizations, local businesses and wealthy individuals to obtain their own security independently from the national community, often exacerbating the weakness of public security agencies and community relations. The territoriality of this practice is illustrated by privately secured and fenced corporate enclaves in Africa,

gated residential communities in Latin America and the 'green zones' of Iraq and Haiti (Avant, 2005; Henry and Higate, 2009). In these examples, security firms create nearly autonomous areas within the host countries, often alienating the wider population (Ferguson, 2005, p. 378). The visible separation between the commercially protected and those living in neighbouring areas contributes to the formation of different 'security communities' within these national territories. As James Ferguson (2005, p. 379) describes, the 'enclaves of mineral-extractive investment on the [African] continent are normally tightly integrated with the head offices of multinational corporations and metropolitan centers, but sharply walled off from their own national societies (often literally walled, with bricks and razor wire)'.

Another development facilitated by the availability of commercial security and military services has been the weakening of international security communities. In International Relations Theory, the concept of international security communities refers to a 'region of states whose people maintain dependable expectations of peaceful change' (Adler and Barnett, 1998, p. 30). It represents the fullest application of the state-centric political order which rests on the recognition of the territorial sovereignty of all member countries. Nevertheless, there have been few examples where the expectation of peaceful conflict resolution among groups of states has achieved the same prevalence as within national borders. Foremost among them have been North Atlantic Treaty Organization (NATO) and the European Union where the sense of community necessary for the functioning of an international security community has been reinforced by common interpretations of external threats, a high density of social interactions and a collective identity (Adler and Barnett, 1998, p. 38). While the defining feature of international security communities is their internal relations, at a maximum they also view and address external threats as common security concerns. In the North Atlantic Treaty (1949), the ideal of mutual responsibility for protection from external threats is institutionalized in Article 5 which proscribes 'that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all'. Despite the persistence and even growth of NATO, the past decades have witnessed a weakening sense of community among its members illustrated by diverse threat interpretations and a preference for 'coalitions of the willing' for the implementation of international security policies. The security industry has reinforced these trends through its discourse of individualized security risks and the supply of non-state security forces for international interventions.

The former has contributed to a shift in the threat perception of the transatlantic security community away from the common threat of the Warsaw Pact to a multitude of 'new' security concerns such as terrorism, crime, proliferation, immigration and economic instability. Although most of these transnational threats can only be effectively addressed through collective efforts, the impression of many governments that their national territories are exposed to these threats to varying degrees has facilitated different national attitudes and approaches. In addition, the non-existential nature of the 'new' security concerns has implied that contemporary military interventions are 'wars of choice'. The latter has permitted Western governments to act unilaterally when there is no agreement over the need for international military operations by supplementing their forces with military contractors.

The recent war in Iraq has been the primary example of this trend. Already at the outset there was a significant disagreement among the members of the transatlantic security community regarding the nature and level of the threat from Iraq. Later the USA and the UK led the intervention by a 'coalition of the willing' without a UN mandate. Since major members of the transatlantic community such as France and Germany refused to become engaged in the war, the coalition forces hired about 160,000 security and military contractors to support their mission (CBO, 2008, p. 1; Hansard, 2008, Col. 1552W). The refusal of the US government as occupying state to accept full responsibility for public security after the war, but to leave it to security companies added another twist to the Iraq case. If it becomes a precedent, it suggests a further change to the state-centric territorial order by relieving intervening states of their international role in the provision of public security (Sassoli, 2005, p. 663). Its effect on the national and international sense of community became apparent in the aftermath as Iraqis increasingly viewed the coalition forces not as liberators, but as hostile powers.

**Rule of law**

A third area affected by the distinct territorialities of commercial security has been the norm, value and practice of the rule of law. Within the state-centric order, territoriality has played a major role in the definition and implementation of the rule of law because it delineates one:

1. who has the right to create the law;
2. who is subject to the law;
3. who enforces the law;
4. to whom the law and its enforcers are accountable.

At the centre of these four dimensions has been the norm of territorial sovereignty. It regards the creation and application of modern law within the territorial borders of the state and concerns the formation of international law focused on inter-state relations (Brown cited in Fitzpatrick, 2002, p. 308). In addition, this order ascribes to the state the right and responsibility for the enforcement of the rule of law within its territory and for the implementation of international law. As with the provision of security, the ideal-typical territorial state holds the *monopoly* on the legitimate use of force with regards to the implementation of the rule of law. Thus, Fitzpatrick (2002, pp. 311–312) writes: 'The use of force in law enforcement is one of the exclusive powers of the post-Westphalian state'. In international relations, the monopoly on the use of armed force with regards to international law is a major factor in the international provision and maintenance of security. It is expressed through the special status attributed to the state and national armed forces in the UN Charter and the Geneva Conventions and includes 'an obligation to prevent territory from becoming a staging area for armed attacks on other states' (Fitzpatrick, 2002, p. 311). In sum, the rule of law goes beyond the mere creation of a rule-governed national and international order (O'Donnell, 2004, p. 32). Modern rule of law is inherently related to the concepts of community and democracy, requiring the involvement of citizens in the definition of laws, the opportunity for redress, and the public accountability and control of the agencies charged with the implementation of the rule of law (Raz cited in O'Donnell, 2004, p. 35).

The commercialization of security challenges the definition, application, implementation, and democratic accountability and control of the rule of law in multiple ways. At the domestic level, contracted security contributes to the creation of private spaces where separate sets of rules apply in addition to public law. Gated communities have been described as 'a form of semiprivate government', where residential associations or developers proscribe how members may behave and who is permitted to enter its commercially policed spaces (Kennedy, 1995, p. 763). Notable about these private territories is the limited involvement of residents in the definition of communal regulations. Citizens are 'the relatively powerless partner' in a gated community because they often only have the option of deciding whether or not to rent or buy a property which requires of them to sign up to regulations already set by the developers or residential associations (Webster et al., 2002, p. 317; also Atkinson and Blandy, 2005, pp. 177–178). Frequently, these regulations are 'incomprehensible and non-negotiable' (MacKenzie cited

in Atkinson and Blandy, 2005, p. 183). They can include the 'banning as a threat to community order such things as basketball hoops over garages, heavy dogs, cats of any weight, too many poodles or smooching grandparents' (Kennedy, 1995, pp. 762–763). The private rules set within these precincts also affect non-members, ranging from restrictions of freedom of speech and movement to racial discrimination (Kennedy, 1995, p. 761). The autonomous rule setting in private territories violates contemporary democratic principles in three areas. Firstly, it disregards the principle of equality because 'in many countries the voting rights in condominiums and corporations are distributed according to the value of the property' (Glasze, 2005, p. 228). Secondly, in private residential or semi-public corporate territories, there is no formal opposition or critical media reporting on decisions. Thirdly, in shopping malls, corporate estates or private residences investors often hold the majority of or control over the property, being able to determine the rules and management of these (semi-)private spaces in line with their profit-maximizing objectives. Often there are no ways for non-members to seek redress within the system of private community association regulations.

In addition, the growing role of security companies in their enforcement presents another challenge to the ideal of territorial sovereignty. Private systems of law 'may provide a wide range of discretion to security personnel, resulting in discriminatory enforcement of the associations regulations' (Kennedy, 1995, p. 769). Also the implementation of public law by security firms undermines the monopoly of the state on the legitimate use of violence for the execution of the rule of law. The employees of these firms 'behave like public law enforcement officers: detaining individuals, conducting searches, investigating crimes, and maintaining order' (Joh, 2004, p. 50). Little research has been conducted about the abuse of force by the employees of security firms operating in Western democracies (Kirby, 2008, p. 84). Joh (2004, pp. 59, 62) suggests that the tendency of commercial security guards to avoid obvious coercive means in their rule or law enforcement stems from their distinct objectives. State police forces are mostly concerned with arrests in order to hold citizens accountable for breaches of the rule of law. Contracted security guards are primarily employed in order to protect their clients from security threats or losses due to theft. As a result, the police operations are 'largely reactive', while security firms engage in preventative practices (Joh, 2004, p. 59). The greater legal rights of commercial security forces as the agents of the owners of private properties and enclaves facilitate the use of proactive security strategies. Contrary to public police, commercial security guards may bar or eject 'those

considered undesirable or unwelcome from the malls, corporate campuses, and other private spaces that are policed privately' (Joh, 2004, p. 65). This power to exclude citizens which are, rightly or not, perceived as potential security threats from the benefits of these private territories acts undermines the central notions of the rule of law that everybody is treated equally and considered not guilty until convicted.

Finally, despite the growing contribution of security firms to the enforcement of the rule of law, the firms and the actions of their employees are typically not subject to the same standards of legal and constitutional accountability and control as public security forces. National laws requiring the licensing of domestic security companies in Europe and North America are often not more than a decade old (de Waard, 1999; CoESS, 2008). The UK government, for instance, favoured self-regulation for many years and only adopted a law on the security industry in 2001. Also in the USA there are still a number of states which lack licensing regimes for security firms such as Mississippi, Alabama and Colorado. Other US state licensing laws require 'little more than asking applicants to promise that they are qualified to be a security guard' (Maahs and Hemmens cited in Joh, 2004, p. 108). Since the requirements for vetting, training and equipment vary considerably, security firms have the option of evading strict standards by registering in the states and countries with the least controls (Stenning, 2000, p. 338). While there has been a tightening of licensing laws in recent years, there are still two major omissions across most Western democracies. One regards the regulation of in-house security personnel, meaning those who are directly employed by a corporation or shopping mall rather than by a security firm. The other concerns the behaviour of contracted security personnel (Joh, 2004, p. 107). The latter is particularly notable in comparison with the public police who are subject to constitutional or legal controls with regards to the detention, arrest and use of force against citizens (Joh, 2004, p. 60). In the case of private territories, the Western rule of law still assumes that the owner is 'king of his castle' and that citizens who enter them have to accept private rules and their private enforcement. That both the rules and the commercial security forces are only accountable to and controlled by the owners disregards the spread of mass private properties as working, shopping and spare time environments in Europe and North America.

The proliferation of transnational military and security firms has similar fundamental consequences for the state-centric territorial conception of the rule of law in international relations. Foremost, the increasingly global make-up and operation of these companies

transforms the territorial foundations of the regulation of the use of armed force in international law. As Fitzpatrick (2002, p. 317) argues:

> The legal definitions of international armed conflict are constructed against the background of the post-Westphalian system. Thus, Common Article 2 of the Geneva Conventions of 1949 envisions international armed conflict between High Contracting Parties. Only territorial states are capable of ratifying the Geneva Conventions. The complex rules that govern international armed conflict . . . thus control behaviour among states.

The conceptualization, creation and the application of the contemporary international laws of armed conflict are all based on the territorial sovereignty of the state (Dinstein, 2004). They assume that armed conflict primarily occurs between states; proscribe that only states can agree on the definition of the international laws of war; and are mostly applicable to states and their agents. These international laws of armed conflict are complemented by several conventions such as the First Additional Protocol to the Geneva Conventions (1977), the UN Conventions Convention against the Recruitment, Use, Financing and Training of Mercenaries (1989) and the Organization of African Unity (OAU) Convention for the Elimination of Mercenaries in Africa (1977) which seek to ensure that states remain the only legitimate wielders of collective violence in international relations (Zarate, 1998; Kassebaum, 2000). Arguably, the state-centric territorial conception of the international rule of law has experienced some modification in recent years, including an increasingly homocentric approach as indicated by the terminological shift from the 'laws of armed conflict' to 'international humanitarian law' (Meron, 2006, p. 2). Nevertheless, states remain the primary addressee of the international laws of armed conflict. Individuals can only be held directly responsible for a very limited set of grave breaches against international criminal law, such as genocide and crimes against humanity (Weigelt and Märker, 2007, p. 378). Moreover, there has not been a venue outside the territorial jurisdiction of states in which international criminal laws could be enforced until the formation of the International Criminal Court in 2002. In the case of the international laws of armed conflict, it remains until today the obligation of states to prevent or prosecute violations (Weigelt and Märker, 2007, p. 379).

The contemporary global security industry evades and undermines the international rule of law on the use of armed force in two main

respects. Firstly, security companies are neither states nor are they always 'accompanying the armed forces', a special category that was introduced in the Geneva Conventions in 1949. As a result large parts of international law are not applicable to these firms, although they often use armed force in local conflicts and to protect their private clients. In Iraq, for instance, it has been reported that the 'Employees of security companies . . . frequently come under fire from insurgents. When they do, they fire back' (Priest and Flaherty, 2004). Imke-Ilse Drews (2007, p. 339) concludes that the Blackwater contractors who defended the Coalition Provisional Authority headquarters in Najaf in April 2004 could even be tried as mercenaries under the Geneva Conventions because they were fighting in what was then still an 'international conflict' or 'alien occupation'. Many military and security contractors would fit the definition of mercenaries outlined in Article 47 of the First Additional Protocol to the Geneva Conventions and used in the UN and OAU conventions against mercenarism. However, the cumulative nature of the definition, the difficulty of proving the profit motivation of a security contractor and the unwillingness of states to enforce these conventions have so far prevented prosecution. Many Western states have instead become complicit in the circumvention of the international laws of conflict by accepting international security companies as legitimate and legal actors (Lehnardt, 2007, p. 140). The US government has officially endorsed the use of 'deadly force' by US security contractors 'when such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in their contract or with their job description' (DoD, 2010). Other states such as the UK have tolerated international security companies which export armed services from their territories.

Secondly, the international operation and organization of international security firms and the diverse nationalities of their employees hinders the enforcement of the international laws of armed conflict. Foremost is the problem of jurisdictional responsibility within an order based on territorial sovereignty. While states are formally responsible for the implementation of international humanitarian law, in practice it is often unclear which state has the right and duty to prosecute security contractors for violations. When security firms work directly for states and their agencies, the responsibility appears to rest with the employing country (Lehnardt, 2007). When security firms are hired by private citizens, businesses or organizations, as is increasingly the case, the question becomes more difficult to answer (Gillard, 2008). Does prosecution fall to the state where the violation took place? Is it the responsibility of

the state where the security company employing the perpetrator is registered? Or is it a case for the state where the offender is a national citizen? Western governments have so far shown little willingness or interest to accept their responsibility for the implementation of international law, leaving the problem to countries where international security firms are operating. Unfortunately these countries are typically those which lack effective and efficient law enforcement agencies – one reason why global security contractors are working there in the first place. Efforts to address these issues through national and international regulations on the export of commercial security services have been limited. Only the US and South Africa have national licensing regimes for the global operation of international security companies (Caparini, 2008). States have also rejected recent attempts to forge new international laws with regards to international security firms. The Montreux Document (2008) which is supported by 39 countries, including Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the UK, Ukraine and the USA, has instead reinforced existing international laws of armed conflict and human rights laws.

**Democracy**

Finally, the rise of the security industry is challenging the norms, values and practices of modern democracy in Europe and North America. Democracy, according to Arthur Benz and Yannis Papadopoulos (2006, p. 5), is 'characterized by structures and processes in which collectively binding decisions are made by responsive actors in the interest of those citizens who authorized them to rule in their place. Thus the democratic legitimacy of a polity and of particular policies requires a circular relationship between decision-makers and the citizenry'. Territoriality has played two major roles in the definition of Western democracy. Firstly, it has defined the scope of the polity or citizenry. Secondly, it has set the boundaries for the application and implementation of collectively binding decisions (Hettne, 2000, p. 35). Importantly, the territorial correspondence between both areas provides that '[e]very person affected by a collective decision should have the opportunity to express his or her will' (Benz and Papadopoulos, 2006, p. 6).

The commercialization of security at the domestic and international levels has important consequences for democratic security policy-making. It affects particularly the definition of security threats and strategies and the accountability of security providers. The first regards a transformation of who is involved in the definition of security threats

and strategies, who is the primary object of security and the processes by which decisions concerning the provision of security are taken (Leander, 2005; Krahmann, 2008). The state-centric ideal of democracy envisages the democratic deliberation and public and parliamentary scrutiny of public security policies by elected representatives of the total citizenry based on an examination of potential security threats to the community. By contrast, security companies and their clients decide unilaterally upon which kinds of security services they consider appropriate for the protection of individual customers and their private properties. Even the commercial security supplied to new collectives such as gated residences is characterized by a lack democratic decision-making. Against the notion that housing associations represent a classic form of democratic self-government, stand inequalities in voting rights based on property value and the 'dictatorial' practices of investment firms owning entire residences (Glasze, 2005, p. 228). Effectively, 'the political organisation in private neighbourhoods is returning to the days of a census suffrage where political influence was institutionally based on status and class' (Glasze, 2005, pp. 228–229).

In addition, commercial security-providers are exclusively accountable to their clients. The typical security firm is 'only interested in the directions, approval, and guidance of its employer' (Joh, 2004, p. 90). However, with the rise of mass private property and the displacement of crime to neighbouring areas, a growing number of citizens not involved in this decision-making process are directly affected by its consequences. As Atkinson and Blandy (2005, p. 179) conclude, 'Gated communities express a broader trend of private decision-making that has wider and public ramifications. In short, the locational choices made by affluent households affect outcomes for the poor in terms of city sustainability, security and social segregation'. In place of collective and democratic control, security decision-making becomes increasingly fragmented and privatized. Loader (1999, p. 384) goes even further, arguing that 'The security market thus offers – and may appeal as – an 'institutionalized exit from politics' (Bauman, 1988, p. 82)', an escape from the 'democratic' requirements that attend the struggle for a share of public policing. In enables individuals, organizations and communities to pursue their particularistic (and self-defined) security requirements without reference to any conception of the common good, and free of the obligations associated with the practice of democratic citizenship.

The emergence of commercially secured mass private properties not only questions the state-centric model of democracy at the

domestic level; the global security industry also can contribute to its destabilization at the international level. The effect of international security firms on the democratic provision of security can be observed in three dimensions. Firstly, international security companies can challenge the democratic control of security by national governments through the supply of security services for actors within. Arguably, this is particularly controversial when their clients are large and influential or when their services have a direct impact on the security of non-customers. However, the deficit of democratic control over the commercial provision of security can be observed independently of the question of whether or not this lack has negative consequences for public security. Within the EU, for instance, the mutual recognition of national licences of security firms indubitably restricts the ability of national parliaments to control the ways in which contract security guards may operate within their sovereign territories. Similarly, the absence of import and export restrictions on commercial security services in most countries around the world has created an area where private, albeit not always armed, force can be employed beyond the democratic control which characterizes state agencies such as national police and armed forces.

Secondly, international military and security companies can support non-democratic factions in internal conflicts, government-business collusion and *coups d'état* and hinder democratic development (McIntyre and Weiss, 2007). Executive Outcomes and Sandline International were widely criticized for their linkages with extractive corporations through major holding companies. This included allegations that these companies were reimbursed by the weak and poor governments by whom they had been hired through the granting of licences to foreign oil and mining corporations (Fuchs, 2007). Also the failure of security companies to instil democratic values into national armed forces which they had been training in military operations and strategy has been noted in cases such as Executive Outcomes in Sierra Leone and MPRI in Croatia (Singer, 2003, pp. 113–114, 126–127; Avant, 2005, pp. 100–113). Finally, leading mercenaries such as the infamous Simon Mann, one of the founders of Sandline International, have been involved in the *coup d'état* attempt in Equatorial Guinea in 2004. Although the target in this case was not a democratic government, the interests of the private investors who backed Mann were clearly not the promotion of democracy, but rather the exploitation of the country's oil resources.

Thirdly, global security firms can further weaken the democratic accountability of international interventions. One aspect is the use of security contractors by international organizations and NGOs such

as the United Nations High Commissioner for Refugees, the United Nations Development Programme, the World Food Programme, the United Nations Childrens Fund, and the International Committee of the Red Cross in humanitarian missions (Ebo, 2008, p. 146). The private protection supplied by security firms has increasingly allowed non-state actors to operate in conflict regions where these actors have previously depended on security support from national or multinational armed forces (Spearin, 2001, 2008). Moreover, some companies such as Blackwater have proposed that international security firms could complement or even substitute for national militaries in international peacekeeping and peacemaking operations (Robertson, 2008). The proponents of this approach argue that it can help make international interventions independent of the vagaries of the democratic decision-making process which has led to the 'shameful withdrawal of Western nations from peacekeeping activities in conflicts of limited national interest' (Brooks and Chorey, 2008, p. 117). Another aspect concerns the circumvention of public and parliamentary approval for the deployment of national armed forces in military interventions abroad (Wulf, 2008, pp. 199–200). The availability of military and security contractors to bolster their armed forces has been one factor which has allowed the UK and the US governments to ignore public opposition to the war in Iraq despite one of the 'biggest anti-war demonstration ever held in Britain and worldwide' (MacAskill and White, 2003). More importantly, the hiring of military and security companies can undermine the democratic control of governments through the requirement of parliamentary consent for the deployment of soldiers abroad. The 155,000 contractors employed by the US armed forces allowed the Bush administration to more than double the personnel for its military operation in Iraq without having to ask Congress for the approval of additional troops (Avant, 2000, pp. 1–2; Avant and Sigelman, 2010). The lack of public and parliamentary information about the numbers and functions of contractors hired by Western militaries in international interventions exacerbates the problem of democratic control. Only the USA has so far attempted to address this problem through the creation of a database in 2006, while the UK government was still in the process of setting up a similar file in 2008 (GAO, 2006, pp. 14–20; 2007, p. 11).

## Conclusion

The proliferation of security and military companies not only contributes to a diffusion of functions and powers from national governments to international and non-state actors, but also has

profound implications for the territorial foundations of the norms, values and practices that have shaped Western security governance during the past century. Many other factors also contribute to the transformation of the 'golden age' nation-state, the international state-centric order and its underlying values. On the ideological side has been the rise of neo-liberalism with its promotion of new forms of public service provision and public accountability. On the practical side have been the perceived demands of the post-Cold War security environment, technological changes and globalization. This chapter has sought to illustrate that military and security companies have not merely been beneficiaries of these changes. They have contributed to and reinforced them through their own discourses and practices.

This chapter has identified four areas which the diffusion of power to military and security companies suggests the rise of alternative norms, values and forms of security governance in Europe and North America. The first regards a transformation of the norm of the state monopoly on violence illustrated by the increasing functions and acceptance of security contractors. The second is the diffusion of security governance from national to private 'security communities' and from collective to individual values. The third includes the ways in which security contractors challenge state-centric forms of law which regulate the use of armed force nationally and internationally and the emergence of security industry self-regulation. The fourth includes a public disillusionment with the normative ideal of democracy and a turn towards individualized and marketized forms of decision-making. Arguably these alternatives have not replaced the norms, values and practices of security governance centred on territorial states. Instead, they have created a system where state and non-state forms of security governance exist in parallel or even in hybrid systems, each creating their own rationalities and concerns.

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# 3

# Intellectual Property Governance: The Emergence of a New and Contested Global Regime

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Neither the architects that set out to build a new post-Second World War order, nor the scholars that took upon themselves to observe it, could have foreseen the nature, shape and complexity of the global governance edifice a mere 60 years later. Nor could they have done so, for human affairs in general and global affairs in particular are complex and always changing, in both intended and unintended directions. While disagreements on the magnitude of recent changes in global governance exist, there is considerable consensus that its nature has changed in some real and important ways in recent decades. Indeed, the emergence of the term global governance after the end of the Cold War exemplifies the need for a concept better capable of capturing the changed nature of the current word order or, rather, disorder. The most discussed changes relate to the nature and sources of power, it being understood to have dissipated or migrated, wholly or in part, from state governments to international organization, regional and local bodies and an abundant array of private actors. In addition, the growing density of networks which connect these new and old actors and structures together is seen as a key characteristic of global governance, as is the increasing number of issues faced by, and rules emerging from, them.

A review of the literature on issues related to diffusion of power and global governance indicates that we are still struggling to fully comprehend and respond to these changes, an unsurprising state of affairs given the diversity of theoretical approaches that cast global governance and its 'problems' in different terms. This is an issue which has been better explained in the Introduction to this volume, alongside the aim of exploring potential common ground between these various theoretical

approaches. This chapter aims to contribute to this debate by focusing on one area of global governance – that of intellectual property rights (IPRs). This is both a comparatively old and a new area of governance, hence well placed to offer a better understanding of both changes and continuities observable in global governance today. It is old area of governance in that IPRs have been with us since the 1500s, and it is a new area in that it has become a (crucial) part of the *global* governance edifice only in the last 20 years or so. There are several important insights we can draw from exploring the emergence of a new global regime in this area of governance, especially in the context of the 'diffusion of power' debate. In a nutshell, with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement setting in place a global IP regime from 1995 onwards, power has actually become more concentrated at the global level, as it is here that most binding IP rules are negotiated. While this is so, with reference to 'mechanism of rule' and 'normative content of rules' discussed in the Introduction, what is observable is that the global IP regime is one where a variety of norms and rules emerge out of contestations involving a number of actors (agency) and fora (e.g. the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the World Health Organization (WHO)). In effect, this has resulted in a thick system of often incoherent norms and rules and a regime that is fragmented, where different sources of authority exist and overlap. As regards agency, while it appears that more and more actors are drawn into contests unfolding in the IPRs regime, it cannot be said that more *non*-state actors are now involved; that is to say that the kind of agency is not fundamentally different to what was before. Ultimately, the governance of IPRs is better understood as a disorderly, conflictual and contested process rather than as an orderly and effective steering arrangement.

This understanding of IPRs governance is shaped by a specific theoretical framework which builds certain bridges between the categories of theoretical approaches, presented in the Introduction. That particular rendering of state-of-the-art places regime studies under a 'global governance as steering' rubric. But this needs not always be the case. Recent work on regimes makes it possible to create some distance between regimes as steering towards conceptualizing them as loci of tension, conflicts and contestations between actors holding differing understandings on what is to be ordered (scope), how it is to be ordered (mechanism) and to whose benefit (normative content). This particular rendering of regimes draws from certain neo-Gramscian and Foucauldian insights and will be explained in the first section, which will be followed by an

analysis of the emergence of the new global IPRs regime. The aim of the second section is to show the change brought about by the TRIPS agreement and the way in which this set in motion the trend towards power concentration at the global level and on certain agencies and actors. In addition, here we explore the particular rationale on which this new regime is founded. This step is important because, as will become clearer, a number of actors hold competing understandings which have so far not been absorbed into the main discourse. This in turn has created ample conflicts and contestations between actors, as well as sometimes incoherent IP norms and rules, which are explored into more detail in the third section. There are a large number of IP contests of this nature, but the focus is on some of the most important ones. The concluding part brings some of these key themes together, ultimately arguing that to the extent we can generalize from this particular area of governance, global governance is fundamentally a contested process between actors over what is to be governed (scope), how (mechanism), by whom (agency) and to whose benefit (normative content).

## Regimes

As any student of international relations (IR) would be able to ascertain, the concept of international regimes has lost some of the charm it possessed in the 1970s and 1980s, and much of the debate about regimes between mainstream IR approaches, namely neo-realism and neo-liberal institutionalism, has quite simply exhausted itself. This is particularly the case with definitional issues and those seeking to explain why states set out to create a regime in the first place. The latter set of issues do not concern us here directly; as for the former issues, thankfully a consensual definition of regimes exists, one which conceptualizes them as a set of implicit or explicit principles (beliefs of facts, causation and rectitude), norms (standards of behaviour defined in terms of rights and obligations), rules (specific prescriptions for action) and decision-making procedures (prevailing practices for making and implementing collective choice) around which actors' expectations converge in a given area of international relations (Krasner, 1982, p. 185). Scholars belonging to different schools of thought are likely to stress different aspects of international regimes; for instance, constructivists, who, incidentally, were among the first to develop the concept and later posit the most formidable criticism to mainstream regime theories, would probably stress regimes' norms and principles, in line with their conceptualization of international regimes as

intersubjective and dialogical in character (Kratochwil and Ruggie, 1986; Ruggie, 1998).

The understanding of regimes promulgated here is located in the latter approach, and is in part driven by the need to question the kind of 'convergence of expectations' regimes are supposed to reflect, as well as the kind of actors who must share these expectations. Building upon certain neo-Gramscian and Foucauldian insights used in regime studies elsewhere (Keeley, 1990; Gale, 1998; Levy and Newell, 2005), regimes are essentially seen as contested and conflictual. That is, rather than viewing regimes as fixed arrangements held together by bonds of coercion or ties of temporarily converging interests, or as benign, orderly and cooperative arrangements among rational state actors, regimes are understood here as evolving, dynamic and contested processes. What issues are placed into or outside the regime remit, what the relationship between issues is understood to be, how they are or ought to be regulated, by whom and towards what ends are matters of disagreement, tension and contestations. Their resolution does not follow logics outside regime actors' understanding and construction of them, and it is precisely because (or at least to the extent to which) actors have different understandings, material capabilities and interests on each one of these issues that regimes are better conceptualized as the loci of greater or lesser but inevitable tension between actors.

Saying that regimes, including the IP regime, are contested processes is not the same as saying that all regimes are contested at all times. The intensity of conflict present in a regime varies between and within regimes over time. Indeed, sometimes a regime may appear to be rather stable and ordered. In this case, conflicts and contradictions are hidden from view altogether because a particular (dominant) group of actors has been successful in legitimizing its discourse and absorbing competing ones held by other actors (Howse, 2002; Lang, 2006). Obviously these actors attempt to extend or at least defend their preferred way of governing an issue, but in many cases competing views, or knowledge, may persist, creating resistance, conflicts, disorder and inconsistencies within the regime (Keeley, 1990). As will become clearer, this is precisely the reason why the IP regime is both more concentrated (at the global level) and more fragmented. Moreover, this conceptualization of regimes is preferred here because a narrow focus on regimes as benign and fixed arrangements says very little about what goes on inside a regime, who are the regime actors, what the contests are about and how these unfold and get resolved. Ultimately, insights into broader changes in global governance, including those preoccupied with the diffusion of power,

are dependent on how we conceptualize, understand and answer these questions.

Regimes are thus sites of negotiations, tensions, agreements and contests. They are alive and evolving, although clearly, the speed and nature of change differs over time and between regimes. Changes occur within a regime because new issues emerge continuously, old ones are often reframed, new actors enter the regime, new knowledge emerges or the distribution of power changes within it (Young, 1991; Levy et al., 1995; Hasenclever et al., 1997, 2000). Regime actors initiate and respond to these changes, attempting to shape the regime, its scope and normative aims in ways which best address their understandings and interests. With respect to actors, all mainstream regime theories, and the vast majority of constructivist ones, have maintained an unhealthy concern with states as the key actors in international regimes. In practice, while they are central, state actors are not the only group of actors involved in regime contests, although they have remained the only actors with the political authority to agree on *public* regime rules. Today, the role of non-state actors in global governance is well accepted, although we have by no means exhausted the conceptual and theoretical puzzles they present to us. In any case, contests over IPRs have always involved non-state actors; in fact, they have often been initiated by them. For our purposes, regime actors need not be limited to those with the ultimate public authority, but necessarily include all state and non-state actors who actively participate in and shape, to a greater or lesser degree, the outcomes of contests over the principles, norms and rules that make up a regime (Levy and Newell, 2005).

One important and problematic aspect of regimes relates to establishing the specific issue-area they are supposed to govern, or its scope. Naturally, issue-areas, being generally understood to encompass issues that are substantively related, can be open-ended and expansive (Leebron, 2002). While in conditions of heightened interdependence the scope of an issue-area is expected to expand, its borders are not randomly or naturally established; on the contrary, they are contested, negotiated and changing, reflecting the power-interest matrix of the actors involved and the degree to which they share a common understanding of, and knowledge on, how to deal with a particular set of issues. Defining the scope of a regime, how issues ought to be governed and towards what ends is precisely the stuff over which regime actors repeatedly clash. This has clearly been the case with the new global IPRs regime with respect to both its emergence and its subsequent development. As will become clear in the next section, it was made possible through a particular

discourse which framed IPRs as a trade issue. While a new global IPRs regime was set in place based on this rationale, subsequent developments demonstrate that this is not a regime in which actors more or less share a common view on how to govern IPRs. State and non-state actors with competing understandings of which IPRs should be governed, how and for what purpose, have increasingly resisted the 'IPRs as trade issue' rationale both within the IPRs regime and outside it, in other global governance fora. One consequence of such resistance has been an increase in the number of IPRs rules and norms, some of which are conflicting and inconsistent with each other. Another related development has been an increased overlap and fragmentation in the IPRs regime and global governance more generally. This state of affairs is best captured by what Kal Raustiala calls a regime complex, a collective of horizontal, partially overlapping and even inconsistent regimes, marked by the existence of several arrangements that are created and maintained in distinct fora. Often, the rules emerging from these fora can functionally overlap, with no agreement on how to resolve potential conflicts between them (Raustiala, 2007).

## IPRs as a trade issue and the emergence of a new global regime

IPRs ultimately delineate the way in which knowledge is created, owned, controlled and diffused. Because IP laws codify a particular arrangement of relations between knowledge 'owners' and 'non-owners', they are anything but natural and neutral. IP laws have historically been permeated by an unavoidable and persistent tension between actors who seek to privately appropriate knowledge and intellectual goods and those that seek its dissemination into the 'intangible commons' for wider public use. Indeed, IPRs have always been contested between IP producers, owners (not necessarily the same group as IP producers), users and regulators; that is, between state and non-state actors. Business actors in particular have played a prominent role in the development trajectory of IPRs (May and Sell, 2006). It is in this sense that the participation of non-state actors in the IP regime is most definitely not a new phenomenon that can be associated with what we today recognize as global governance. Due to these contests, IPRs have constantly been evolving as (non-state) actors have brought forth new demands and pressures for the rearrangement of IP laws, motivated by, and seeking to influence, the ideological, social, economic and technological changes taking place around them.

Without doubt, the 1995 WTO TRIPS agreement is the most significant development of the IPRs regime. IP protection has existed and evolved since the 16th century but, until TRIPS came about, IP rules were generally developed, contested and embedded within national borders. An international IP regime did emerge in the late-19th century with the establishment of the Paris and Berne Conventions (on the protection of industrial property and literary and artistic work, respectively) and of BIRPI (Bureaux Internationaux Reunis pour la Protection de la Propiete Intellectuelle, the forerunner of WIPO), underpinned by the broad principle of non-discrimination. In this regime, international IP law developed mainly on the basis of individual national choice, as states were largely free to design their own IP legislation as long as they did not discriminate against foreigners (Okediji, 2004; Anawalt, 2003). As a result, by the late 1970s, the IPRs regime was characterized by diverse national IPRs laws and a growing number of separate international IP treaties (on patents, plant varieties, copyright and so on), commanding different memberships and presided over by the WIPO which, incidentally, had no effective enforcement or dispute mechanisms (Emmert, 1990). TRIPS entered the scene in 1995 and thereon the IPRs regime changed substantially; it mandated minimum, and rather high standards in both substantive and procedural IP matters, decreeing what rights should be granted, in what areas, to whom, how domestic administrative bodies and courts should enforce them, while also binding all the WTO members (currently 153) and their IPRs commitments to the WTO dispute settlement mechanism. It launched a global IPRs regime wherein, although some flexibility is allowed to governments, rather high IP protection rules are binding, enforceable and (becoming) fairly harmonized across most of the world.

In other words, what is observable in the case of IPRs is that in some real ways, power has moved away from state *and* non-state actors at the domestic level, towards state *and* non-state actors at the *global* level. This is because TRIPS turned the traditional national–international paradigm upside down, requesting that contests unfolding largely at the domestic level that traditionally produced IP legal norms and procedures now be renegotiated in light of 'one-size-fits-all' TRIPS obligations (Okediji, 2003). This is not to say, however, that there has simply been a shift of where power struggles are located, from the domestic to the global level. For one, it is not true that domestic contests over IPRs have disappeared, but that the IPRs that eventually find their way into domestic laws are less the outcome of domestic contests and more of those unfolding at the global level. Secondly, and related, it does not follow that

all the actors previously involved in IPRs contests have simply upped sticks and moved to where the rules of the game are now made. Clearly, many domestic actors, be they business, numerous civil society groups and NGOs and even certain governmental agencies are not able to participate in contests over IPRs at the global level, although some of the (much) better resourced and connected ones are indeed part of broader organizations and networks that operate at that level.

In addition to these continuities and departures, it is also worth noting that the discourse upon which the new global regime set in motion by TRIPS is built, is a rather peculiar one. Essentially, within this rationale, IPRs are seen as a commercial and competitiveness issue (May, 2000) and TRIPS and other IP agreements that have followed it govern them as such. The making of TRIPS is indeed a fascinating case, firstly because IPRs are complex and impinge upon many other issue-areas in addition to trade, such as education, creativity, health, agriculture, competition, biodiversity, technological innovation and transfer, human rights, development, investment and others (Maskus and Reichman, 2004). Other possible and competing IP rationales have thus been marginalized by the mainstream 'IPRs as trade issue' rationale, with implications that will become clearer in the next section. Secondly, TRIPS is a fascinating case because the likelihood that the trade regime, concerned primarily with liberalizing trade and enhancing competition, would extend strong monopoly rights to private right-holders when, incidentally, most of its members are net-IPRs importers, was plausibly very small (Braithwaite and Drahos, 2000).

Both these seemingly puzzling developments can largely be explained by recalling that TRIPS was concluded at the WTO thanks to a reframing of IPRs as a trade-related issue in the late 1970s and early 1980s by certain IP-reliant business actors in the most economically-advanced WTO members. More specifically, these were the globally oriented entertainment and high-tech industries (such as music, film, publishing, pharmaceutical, electronic and chemical) in the USA, the EU, Switzerland and Japan. These non-state actors were rather successful in framing the global protection of *their* IP interests in the world market as a commercial and competitiveness issue. This, in turn, resonated well with the broader concomitant shifts which saw certain key governments increasingly rely on markets and market actors to address many of the economic and social problems they found themselves facing. As has been demonstrated elsewhere (Drahos and Braithwaite, 2002; Sell, 2003; May and Sell, 2006), the worldwide protection of these actors' IP interests came to be seen as a vital part of the commercial interest of the USA,

EU and a few other trade-regime members whose economic make-up had a significant knowledge and information base.

Once this particular rationale of 'IPRs as trade issue' was accepted and adopted by these state and business actors, the next step involved convincing other regime members to share it, precisely because what was sought was a move away from the (existing) international to the *global* protection of quasi-harmonized IPRs. In the course of the Uruguay Round, other regime actors, particularly resistant ones such as India and Brazil, were made to appreciate the merits of this rationale in a variety of ways, including coercive ones. Observers of trade negotiations and of the Uruguay Round in particular are well aware of the unilateral pressure brought to bear on some recalcitrant regime actors by the US and the EU, especially in the form of the US Special 301 designed specifically to address US grievances about IP protection levels abroad. Thailand, Brazil and South Korea were among the countries whose exports became subject to tariff increases by the US or the EU, or both, during the late 1980s (Ryan, 1998, Sell, 2003). Pressure was maintained throughout the Uruguay Round and, indeed, increased after TRIPS came into force in 1995 (Muzaka, 2011). The inclusion of TRIPS, and the rationale it embodies, in a 'package deal' to agriculture and other issue-areas negotiated during the Uruguay Round guaranteed its formal acceptance (Watal, 2001; Sell, 2003). In addition to such pressures, there were attempts to discursively legitimize TRIPS through framing the lack of IP protection as a non-tariff barrier, a phenomenon the trade regime seeks to eliminate, as well as 'piracy' and 'theft' which no responsible member of the world community would reasonably condone. Moreover, the 'IPRs as trade issue' rationale also included arguments that were aimed at quelling concerns often raised by less developed regime members. For instance, strong IP protection was argued to be the harbinger of the much needed foreign direct investment (FDI), domestic innovation and eventually economic development, although there exists no conclusive proof or consensus on the interplay between them (Maskus, 2004; Blakeney, 2006).

The discussion so far illustrates how TRIPS set in motion an IP regime that is different to the previous (international) IP regime as regards its locus and logic. However, despite its *formal* acceptance, other regime actors do not fully share the 'IP as trade issue' rationale. That this logic/rationale is still the preferred discourse for key state and IP-reliant business actors that brought TRIPS about is observable in several post-TRIPS developments. During this period, they have largely adopted a 'TRIPS-plus' attitude, considering TRIPS as a platform and seeking to

further expand IP rights, introduce new IPRs not covered and reduce exceptions to IP protection afforded by TRIPS itself. Two WIPO agreements concluded soon after TRIPS – the 1996 Copyright Treaty and the 1996 Performances and Phonograms Treaty – clearly demanded higher and stronger IP protection at the behest of these actors (Drahos and Braithwaite, 2002; Yu, 2004). In addition to these changes at the multilateral level, governing IPRs as a trade issue has also found expression at the regional and bilateral level, especially since the mid 1990s. The expanding and overlapping grid of free trade agreements (FTAs) between a developed and developing party (or parties) has provided another level where the 'IPRs as trade issue' rationale is materialized in concrete IP chapters that almost always go beyond those mandated by TRIPS (Abbott, 2004; Drahos, 2007). These developments demonstrate that IPRs rules are now emanating from various fora: at the very least from WTO, WIPO and regional or bilateral FTAs. As the next section shows, this trend towards overlap and fragmentation has been exacerbated further as other actors have attempted to resist the 'IPRs as trade issue' rationale through using competing frames/logics such as, for instance, IPRs as a public health issue (at the WTO and WHO), IPRs as a safeguarding biodiversity issue (at the WTO, WIPO and 1992 Convention on Biodiversity [CBD]) or IPRs as a respect for human rights issue (at WHO and human rights bodies).

The linking of IPRs to other issue-areas, including trade, is not surprising. As mentioned earlier, IPRs are complex and impinge upon many other issue-areas, so links are conceptually and empirically possible. In fact, such linkages cannot be said to be new in the IPRs regime as some of them have already been sought or made in the past. Indeed, IPRs had been linked to free trade before, but the link was the opposite of that established by TRIPS. During the mid-1800s, avowed free trade advocates in Europe argued that IP protection constrained free trade in goods with IP claims and achieved some success in rolling back or eliminating patent protection in certain European powers, albeit only for a short time (Penrose, 1951; Machlup, 1958). When the USA was less concerned with IP protection and eagerly promoting the US-style transnational corporation model at home and abroad, it used its dominant position after the Second World War to negatively link IPRs to competition, and anti-trust measures were adopted widely as a result (Porter, 1999). Similarly, developing countries' efforts to establish a New International Economic Order (NIEO) during the 1970s included demands for a New Information and Communication Order

which negatively linked IPRs to human and economic development, but without success (Braithwaite and Drahos, 2000; Drahos, 2002).

Hence, linking IPRs to other issue-areas – that is, producing competitive rationales/logics to the dominant one – is not a new phenomenon. What is notable more recently, as will be seen shortly, is the proliferation and simultaneous pursuit of such IP rationales/logics in various fora of global governance. Ultimately, they indicate that a shared consensus among regime actors that IPRs are closely linked to trade and ought to be governed as such is still missing, even (or, rather, especially) after over a decade of TRIPS. This does not make TRIPS illegitimate in legal terms, for trade regime members accepted it alongside other Uruguay Round agreements. However, to the extent to which regimes operate on shared understandings, the rationale of 'IPRs as trade issue' lacks legitimacy, because a considerable number of regime actors were coerced into formally accepting it. As the next section shows, these actors' efforts to frame IPRs using different rationales in the post-TRIPS period, and the ensuing growth in the number and intensity of IP contests, has had as a (perhaps unintended) consequence the further fragmentation of the global IP regime.

## New conflicts and contestations

Despite key actors' efforts to stabilize/normalize the dominant 'IP as trade issue' logic in the post-TRIPS period, competing rationales about how to govern IPRs have persisted, fuelling a number of conflicts and contestations in the new global IP regime. While consensus that IPRs should be governed as a trade issue is still lacking, there is no consensus over what should replace this current rationale. But the absence of a competing rationale unifying resistant state and non-state actors has not stopped them attempting to change the IP regime in ways which better correspond to their interests and normative positions. This has largely been achieved through linking IPRs to other issue-areas (e.g. human rights, development). As a result, other regimes have been drawn into IP contests, further contributing to the complexity and fragmentation of IPRs governance. While space limits make it difficult to afford them the attention they deserve, it is worth focusing on some of the most important contests: those over IPRs and access to medicines, human rights, development, biodiversity and the protection of traditional knowledge. In what follows, the aim is to draw a sketch of how, in the absence of consensual knowledge, state and non-state regime actors

have resisted the 'IP as trade' rationale by challenging it in numerous global governance fora.

The link between IPRs and access to medicines was not the first one to be made post-TRIPS, but it certainly gained the most prominent profile and it was relatively successful, at least insofar as it resulted in TRIPS being amended in the 2005. Like the 'IP as trade' rationale, the IP and access to medicines one was framed by non-state actors. In the mid to late 1990s, a small but growing coalition of international (health) NGOs, known as the Access Campaign, became increasingly concerned and vocal about the impact of strong pharmaceutical IPRs on the affordability and accessibility of patented HIV/AIDS medicines (and of medicines generally), particularly in developing and least-developed countries (Sell, 2003). This link, cast on strong moral terms such as 'patients before patents' and 'generics = cheap medicines = life', resonated well with three broader developments; first, in the post-TRIPS period, developing countries were finding their policy options to address public-health concerns were limited, both as a result of TRIPS and of some TRIPS-plus obligations. Second, public-health crises were also highly prominent; indeed, by the late 1990s the HIV/AIDS epidemic had reached disturbing and astonishing proportions, particularly in certain parts of the developing world. Third, by then a consensus had formed which saw the concept of (inter/national) security considerably expanded, to include threats emanating from global epidemics and diseases (Fidler, 2004). As a result, the coalition between Access Campaign NGOs and certain state actors within the trade regime, such as the African Group, India, the Philippines and Brazil, was successful in securing a unanimous Declaration on TRIPS and Public Health at the 2001 WTO Doha Ministerial which reasserted the importance of public health vis-à-vis IPRs, and an amendment of certain TRIPS compulsory licensing obligations just before the 2005 Hong Kong Ministerial (WTO, 2001, 2005). It is worth repeating here that despite these successes at the global level, various FTAs have continued to introduce TRIPS-plus obligations for pharmaceuticals at the bilateral level, thus further entrenching the 'IPRs as trade issue' rationale.

While struggles over IPRs-access to medicines are by no means resolved, this linkage also helped opened up the IP regime to other regimes and issue-areas, on the first instance, to the public health and the human rights ones. At the height of the IP-access to medicines contests in the late 1990s, the WHO passed a series of resolutions which encouraged member states to review options under international agreements such as TRIPS to ensure and safeguard access to essential

medicines (WHA, 1999, 2001). More recently, its role has gone beyond passing resolutions in support of public health commitments to housing new initiatives that seek to fundamentally overhaul the way the pharmaceutical R&D process is funded and the IP system to which it lends itself. These developments are directly related to a 2003 proposal by a group of developing countries, led by Brazil and supported by many health NGOs, to establish an independent commission to examine the relationship between IPRs, innovation and public health. After several intermediate developments, the 2008 Global Strategy of the current WHO Intergovernmental Working Group on Public Heath, Innovation and IP (IGWG) included certain proposals to fund pharmaceutical R&D such as prizes, government funds and patent pools (WHA, 2008). While it remains to be seen whether these proposals will change fundamentally the conventional pharmaceutical IP model, it is clear that IPRs are now an important part of this regime's remit.

Yet another front was opened with the link established between IP protection and human rights in the late 1990s. Again, it was a consortium of different international NGOs that prompted the IP–human rights link in mid 2000 through challenging the compatibility of TRIPS with human rights obligations (Sell, 2006). In response, the UN Human Rights Sub-Commission adopted a resolution on IPRs and human rights which explicitly pointed at real and potential conflicts between TRIPS obligations and the realization of economic, social and cultural rights (ECOSOC, 2000). This was only the first of many resolutions and reports the many bodies of the human rights regime have been only too keen to pass and adopt, all of which have been highly critical of the current IPRs arrangement (e.g. ECOSOC, 2001; CHR, 2003). Importantly, the conflicts they highlighted cut through many other issue-areas and regimes including, among others, health, farmers' rights, education, biodiversity, and the protection of indigenous culture and knowledge. In many ways, the IP–human rights link has served as a broad umbrella under which actors engaged in contests over narrower IP links can coalesce and tap into the strengths of a wider network (Schultz and Walker, 2005).

An additional front for contest over IPRs was opened by linking IPRs to biodiversity. Biodiversity is itself a complex issue which is dealt with in various fora and regimes, not unlike the global IPRs regime itself. For instance, rules governing genetic resources emanate from various regimes which include those build around the 1992 Convention on Biodiversity (CBD), the 1961 International Union for the Protection of New Varieties of Plants (UPOV) and the 2001 International Treaty

on Plant Genetic Resources for Food and Agriculture (Helfer, 2004). To unbundle only one dimension, the conflict between certain IP rules mandated by TRIPS and those set out by the CBD were the earliest one raised at the WTO TRIPS Council by some developing countries and sympathetic NGOs only a few years after TRIPS came into force (Watal, 2000; Pugatch, 2004). These concerns are founded on what some actors see as adverse impact of stronger 'life-patenting' IP rules on biodiversity and bio-piracy. Even a precursory look at the WTO and the CBD Conference of Parties' agenda will reveal that these contests are still unsettled. Indeed, they have assumed new and different dimensions, of which the link between IPRs and the protection of traditional/indigenous knowledge is the most interesting, not least because it highlights the overlap between IP protection, biodiversity, trade, culture and human rights. This is why these contests are unfolding in different fora, including various human rights committees, the WTO TRIPS Council, UNESCO, WIPO and the CDB Conference of the Parties. Among others, one of the key arguments raised by countries with substantial indigenous communities, and civil society groups representing their interests, has been that: (1) new IPRs should be devised to protect indigenous knowledge (so far considered as part of the public domain); and (2) IPRs granted in the meantime should contain disclosure of the origins of genetic resources or traditional knowledge involved, as well as facilitate benefit-sharing with such communities of their commercial value (Pugatch, 2004; Sell, 2006).

Some of these issues mentioned above, have been brought back to WIPO, which is currently both housing initiatives that aim to harmonize upwards certain IPRs rules (e.g. the new Substantive Law Treaty) and those that conflict with the 'IPRs as trade issue' logic that underpins them. The most prominent of these competing rationales at the WIPO and beyond is that which frames IPRs as a development issue. As was noted earlier, this particular linkage was made, unsuccessfully, by developing countries as part of their efforts towards a New International Economic Order in the 1970s. This time, it was a group of developing countries again (known as the Group of Friends for Development, led by Brazil and Argentina) supported by civil society groups, that proposed a Development Agenda for WIPO in 2004. This new agenda aims to overhaul WIPO's mandate to view IP as a tool for development, rather than as an end in itself. An important item of this complex Agenda is a proposal for a treaty on Access to Knowledge (also known as A2K treaty) whose origins hark back, once again, to a widely divergent group of international NGOs (Drahos, 2005; Helfer, 2007). Reflecting its origins,

the key idea bringing together the many themes of the A2K is that access to knowledge is a basic right, that restrictions on access to IP matter should be the exception, not the norm, and that international mechanisms ought to be created in order to protect and sustain open-source models of innovation (Kapczynski, 2008).

In the absence of consensual knowledge, contests over access to medicines, human rights, traditional knowledge, biodiversity and development are still unfolding. They can be seen as an instance of 'weaker' actors seeking to challenge the dominant knowledge/rationale by engaging in fora where other competing rationales (e.g. protection of biodiversity, development, human rights) persist. One outcome so far has been that the IPRs regime has become a contested regime complex, where the scope and content of often conflicting IP rules and norms emerge from various fora. One could argue that while this may be the case, domestic IP laws continue to be tailored and modified to comply with TRIPS and the 'IPRs as trade issue' rationale which underpins it. In other words, these contests may not matter, in the sense that the IPRs-trade link remains strong and unchallenged where it truly matters. Nevertheless, because regimes operate on shared understandings and negotiations over new agreements build on an existing body of norms, rules and knowledge engaging in such contests holds promise for significant changes to the current IP regime. There is no guarantee, of course, that the 'IPRs as trade issue' rationale will be undermined. This is because the outcomes of regime contests are indeterminate, particularly when the number of actors involved is considerable, their interests varied and consensual knowledge absent. For now, many of the developments mentioned here are still new and unfolding and, while they may or may not change the current IP arrangement, so far they have contributed in creating a regime complex which is in flux, overlapping and contradictory.

## Concluding thoughts

Zooming in on a particular area of global governance such as IPRs has the advantage of better contextualizing some of the key issues that concern this book. The emergence of a new global regime is, in itself, a substantial change in how that particular issue-area is governed. What we see in the case of IPRs is that their governance remains contested and that both state and non-state actors remain actively involved in such contests. Indeed, most changes and challenges are actually initiated by non-state actors. However, while there is no change in these broad

classifications of regime actors, there have been significant changes in their composition due to the locus of activity having moved largely to the global level. As we have seen, with the arrival of TRIPS the ability of governments to design IP rules better suited to varied (and varying) domestic exigencies has largely shifted to the global level. It is in this context that the argument was made that power has become more concentrated at the global level. Some of the reasons for this change were discussed previously and more can no doubt be added. As regards the 'diffusion' of power debate, two additional points are worth making. Firstly, power and authority has not necessarily left the state, although the locus of decision has largely moved upwards at the global level. Because IPRs are for the most part enforceable through public law, business actors have an interest in states not only maintaining control over IP enforcement, but making such enforcement more centralized and harmonized. This is part of the reason why, as argued earlier, TRIPS came about. Secondly, if in other areas the participation of non-state actors is a novelty, this cannot be said for IPRs because non-state (business and civil society) actors have always been engaged in contests over IPRs. Business actors have been particularly active in shaping IPRs rules without claiming IP rule-making and enforcement as their responsibility. What has changed, as we have seen, is the shift towards contests between various actors at the global level, although domestic IP contests have obviously not disappeared.

One important consequence of this shift is that only those state and non-state actors that are better able, resourced and organized at the global level can realistically participate in struggles over how IPRs are governed, regardless of the fact that how IPRs are govern affect large numbers of individuals in one way or another. Even then, participating in global regime contests does not occur along pluralistic lines. The distinction between weaker and stronger regime (state and non-state) actors in terms of structural power is real and has important consequences over regime contests. As we have seen, the mainstream 'IPRs as trade issue' rationale was first framed and put forward by certain IP-reliant business actors. The goal of actors sharing this rationale has since then been that of normalizing and stabilizing this particular set of the principles, norms and rules that should govern IPRs, to the expense and marginalization of others. Nevertheless, to the extent that contests are about securing consent and actors holding other views and interests are not convinced or inclined to accept a particular discourse, the success of stronger actors in regime contests is not guaranteed *a priori*.

In the case of IPRs, other state and non-state actors have actively sought to at least weaken the 'IPRs as trade issue' logic, if not completely overhaul it. Their success has been varied so far, but the challenges posed by them are not insignificant. One consequence of these contests is that now other regimes and fora have been enrolled in the IPRs regime, making it a complex and fragmented one. Another consequence has been that some of the norms and rules emerging from these new fora run against the 'IPRs as trade issue' rationale, ultimately making the new IPRs regime somewhat contradictory and conflicting.

It is for all these reasons that the global IP regime can be best described as a regime complex marked by the existence of several arrangements that are maintained in distinct fora, generating an ever-increasing but sometimes incoherent rules and norms. It may well be that regime complexes become a more prominent feature of global governance in the future. Be that as it may, we can more broadly conceptualize global governance to encompass all regimes as understood here, formal and informal, public and private, and obviously much more. By extension, global governance itself emerges as a dynamic, conflictual and contested process. As with regimes, this process involves a large number of state and non-state actors with diverse normative concerns, understandings and interests, all attempting to shape the global governance edifice accordingly in a multitude of issue-areas. In other words, global governance is fundamentally a *contested process* between actors over what is to be governed (scope), how (mechanism), by whom (agency) and to whose benefit (normative content). Far from being a steering capacity, it is an arena of conflict, a contested and disorderly process that favours certain actors and solutions over others, and one which is continuously evolving. This is a more politicized concept but one that is closer to what we seek to understand, compared to merely conceptualizing global governance as the locus where common interests and unproblematic resolution for common problems and found and located.

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# 4

# Nodal Governance: The Diffusion of Power in Global Forest Governance Networks

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## Introduction

The growing importance of non-state actors in global and transnational politics is a persistent theme in the global governance literature, providing a key motivation for going beyond the older international regime framework. The latter's stress on intergovernmental negotiation leading to the creation of hard international law and the existence of durable international organizations has been under attack for some time. For every effort at global coordination that proceeded according to the regime model, it seemed there were many more that achieved significant results in other ways. And, as the climate change 'regime' clearly demonstrates, even where the model of negotiation, framework convention and protocol was followed to the letter, it is sometimes hard to discern much progress on the ground. Dissentient voices unhappy at the mainstream policy choices proceeded with their own initiatives, altering the calculus of cost and benefits for the main regime actors and introducing new modes of coordination based on their own rules and procedures. The 'governance' idea is intended to capture such developments (Okereke et al., 2009; O'Neill, 2009).

As critics have observed, however, the global governance framework is better at describing these new arrangements than it is at explaining how they work. Global governance too often operates with a zero-sum conception of power implied by the simple distinction between state and non-state actors, where reduced involvement by one implies more power to the other (Börzel and Risse, 2004). The category of non-state actors is a conceptual grab bag of heterogeneous objects, ranging

from international organizations , through transnational corporations, to a variety of non-governmental organizations (NGOs) both large and small (Auer, 2000). The introduction of new categories such as non nation-state actors adds other levels without materially reducing the potential for conceptual confusion (Betsill and Bulkeley, 2006). Above all, the global governance framework is actually less successful in explaining how coordination takes place than the old international regime framework that it aspires to replace, since the latter could appeal, however unrealistically, to the idea of imperative coordination through international law.

In this chapter, we address these criticisms by appealing to the coordinative role of transnational policy networks. As Guzzini and Neumann note in the Introduction to this volume, the fracturing of the world political system into a series of issue-areas where hierarchy (or coordinative structure of any kind, for that matter) is hard to make out, poses the problem of how collective action is organized in these areas. Each of the various arrangements proposed – regimes, non-regimes (Dimitrov, 2007), regime complexes (Raustiala and Victor, 2004), governance architectures (Biermann et al., 2010; Howlett and Rayner, 2010) – while potentially offering advances in realism, poses problems of agency and mechanism in ever more acute forms. Questions of exactly who is steering, how steering is accomplished and whose goals are being taken as the ultimate destination remain largely unanswered.

While key features of network structure, notably nodality and density, are proposed as mechanisms that explain how coordination through transnational networks actually takes place, it is the hierarchical character of network membership that is significant for understanding the diffusion of power. In the forest governance cases discussed in this chapter, the nodal actors are either traditional international organizations composed of, and dominated by, state actors or the key states themselves acting through their forestry or development agencies. Far from disappearing, in a move very similar to that observed at the national and subnational levels by critics of the 'hollowing out of the state' thesis, state actors seem to have removed themselves to new locations and network analysis makes them visible again (Agranoff and McGuire, 1998; Howlett, 2008). The significance of this development in terms of the paradox posed by Guzzini and Neumann, can then be explained in terms of well-developed theories of network structure and function. The thesis of this chapter is that power is certainly diffused, in the sense of operating in new ways, in new arenas and at broader scales than ever before. Equally significantly, though, power accrues to many

of the same actors as before, by providing them with new modes of coordination. They achieve their goals and get things done, as Guzzini and Neumann put it, 'yet done by someone else or a combination of actors'.

To establish this thesis we begin in the next section by recalling the early connection between policy network theory and governance ideas and suggest reasons why it was premature to abandon the explanatory mechanisms implied in this connection. We also introduce the idea of the global policy Web and the virtual policy networks (VPNs) that can be observed there as ways of both visualizing and analysing network structures and consequences at a global level. The third section, the global forest policy and forestry/climate change cases: competing discourses of global forest governance, examines the cases of the international forest governance network and the emerging network on forestry and climate change. Forestry is chosen precisely because of the complexity of the governance architecture and the suggestion that the outcome is a non-regime (Dimitrov, 2005) designed to allow business as usual by key nation-state actors. Climate change is a powerful cross-cutting issue that threatens to add to the complexity of organizing and steering global forest networks.

In the next section, Nodality and the flow of information, we analyse the structure of the VPNs more closely and isolate the governance mechanisms at play, stressing the role of networks in structuring information flows through nodes. While the Forestry VPN clearly shows the continuing role of nation-states in global forest governance, the Forestry and Climate Change VPN suggests the increasing importance of the World Bank and other global financial institutions. Finally, we conclude that the structure of the two VPNs underlines the continuing importance of states and international organizations as agents of global governance. Network theory also provides some support for the thesis that an overlooked mechanism of governance is control of information flows by these nodal actors who are present even in a complex and disorganized governance architecture.

## Internationalized policy environments and network governance

### Comparative public policy and the intellectual roots of the global governance idea

The global governance perspective has multiple intellectual roots, including traditional international relations, comparative politics and

comparative public policy. Shifts in governance modes were observed within nation-states long before there was talk of 'global governance'. After the debates in the 1970s and 1980s about the inability of centralized, top down institutions to respond to the scope and scale of social demands, it became commonplace to refer to a shift away from 'state centric' modes of coordination: 'a shift from a hierarchical bureaucracy towards a greater use of markets, quasi markets, and networks, especially in the delivery of public services ... the state increasingly depends on other organizations to secure its intentions and deliver its policies' (Bevir, 2009, p. 3). However, as Capano argues, perhaps the most serious mistake in trying to understand these developments was the tendency to juxtapose 'old government' with 'new governance' as if the former simply disappeared as the latter advanced (Capano, 2011). In a striking parallel to the debates about the diffusion of authority in international relations, the relationship between government and governance was conceptualized as a zero-sum and most often operationalized as a simple transfer of power and authority from state to non-state actors.

Eventually, more nuanced analysis established that the relationships were much more complex. While maintaining the original insight that 'governance' implies a concern for horizontal coordination rather than hierarchy, studies of governance increasingly emphasize that public institutions still exist and continue to pursue public goals. However, the public institutions of the state now operate in a much more complex policy context alongside a variety of new actors and institutions, and have to adopt a range of new strategies to achieve their goals. Significantly, as we shall argue in the case of global forest governance, these strategies are equally as likely to appeal to traditional policy instruments used in new ways as they are to devise and adopt new instruments entirely.

The internationalization of many policy domains became apparent during the 1980s and 1990s, adding to the complexity of domestic policy-making and playing an increasingly prominent role in explanations of the changing faces of government and governance. Early attempts to account for the international dimension in domestic policy-making often appealed to the, then fairly novel, idea of policy networks. A decade ago, for example, Coleman and Perl (1999) explicitly linked the growing importance of horizontal coordinating mechanisms to internationalization and proposed the development of the network concept to explain the different governance modes that resulted. Coleman and Perl distinguished between two dimensions of governance relationships: the different degrees and patterns of interaction between the actors

involved (policy communities), and the different ways in which public and private power is shared between the actors (policy networks).

While variants of this basic two-dimensional space are found throughout the comparative public policy governance literature, Coleman and Perl's version is helpful for a number of reasons. First, the idea of patterns of interaction focuses attention on boundary drawing between those who belong and those who don't, and emphasizes the role of discourse in creating and maintaining boundaries. Second, the idea of networks sharing public and private power in different ways – through the exchange of information, expertise and political support among network members – immediately breaks away from the assumption that this is a zero-sum relationship. As they noted, in internationalized policy domains public actors operate at different levels where the meaning of 'public' power will also differ, 'thereby blurring somewhat the traditional public-private distinction'.

Third, in an understandably tentative way, Coleman and Perl began to explore the role of discourse in policy networks. Boundary drawing and maintenance has an obvious discursive dimension that they elaborated in terms of a number of concepts, including framing (Schön and Rein, 1994), and the establishment of policy paradigms (Hall, 1993) or référentiels (Jobert and Muller, 1987). Information is a basic attribute of policy networks, the main currency of network exchange, and information is created and structured by discursive practices. Finally, Coleman and Perl concluded that the heightened complexity and greater interdependence created by the internationalization of policy domains would inevitably create situations where multiple policy communities address the same policy problems, necessitating improved horizontal coordination. 'Mediation' between different communities and the 'translation' of policy ideas from one community to another were proposed as horizontal governance mechanisms. They speculated that the impact of the core variables – degrees of integration and the relations of public and private actors in the network structure – on mediation and translation would turn out to be an important part of a future research agenda.

### Networks, nodes and the production of power

The global governance literature has been slow to take up Coleman and Perl's challenge. Use of the network concept is often descriptive or straightforwardly managerial (Reinicke and Deng, 2003) rather than explanatory. As Sending and Neumann (2006), argue, while global governance studies make a conventional appeal to the idea of 'multilayered and polyarchic networks that comprise states, NGOs, intergovernmental

organization (IGOs) and transnational corporations', these studies typically conclude that network governance makes non-state actors more powerful at the expense of states (or could do so if only their networks were better organized). The original insight of the comparative public policy literature that network governance typically changes the role of government vis-à- vis non-state actors (and may even strengthen it or strengthen both simultaneously vis-à-vis the objects of governance) has been lost along the way.

Network theory, on the other hand, has developed an account of how power is produced in networks that goes beyond these simple zero-sum approaches. In the original work of Castells (2000), networks were conceived as coordinating mechanisms based on the greatly increased ability of contemporary information technologies to master complexity by improving information flows and concentrating resources at key points. Castells referred to these points as network nodes. Building on Castells' work, Burris et al. (2005) argue that nodes are actually the sites of network governance, where 'the flow of information and communication is translated into action' (Burris et al., 2005). On their view, nodal governance depends on the presence of four characteristics: a *mentality* or way of thinking about the problem that the node is attempting to govern; a set of *technologies* for exerting influence over events and actions; *resources* to support the operation of the node; and *institutions* that structure and direct the mobilization of mentalities, resources and technologies over time (Burris et al., 2005) They are particularly insistent on this latter feature of governance nodes: 'to be a governing node as this theory defines it, a node must have some institutional form, even if temporary' (38).

To illustrate the emergence of governance nodes and their consequences, we have chosen as a critical case one of the most poorly understood developments in global governance: the rapid expansion of the policy Web. The policy Web refers to the set of all webpages containing information on policy and government priorities, providing opportunities for both state and non-state actors to market policy preference and shape discourse. Lack of attention to the policy Web is particularly puzzling, not least because it is the most direct expression of the use of information technologies as governance tools described by Castells and the other early theorists of networks.

Perhaps this neglect is founded on uncertainty about the impact of information technologies. Scholars have certainly disagreed over the effect of the Web on political environments, with some arguing that it would promote participatory democracy (Castells, 2000) while others

warned of lost civic engagement (Sunnstein, 2001). While discussions of the Web's impact on the role of public authorities have been rare, many of the studies demonstrate a narrowing of participation as the Web concentrates power and authority in a limited network of key players (Hindman et al., 2003; Rethemeyer, 2007). O'Neill (2009), on the other hand, links the rise of transnational advocacy and protest networks directly to the growth of the Web and other Web-based communication tools which, in her view, are responsible for providing alternative 'framings' to fill the gaps in traditional international environmental regimes, connecting global and local political processes. However, her account rests heavily on the idea of framing as a discursive practice with unspecified effects in the world (Burris et al.'s 'mentalities') and pays little attention to the role of resources and institutions.

**Virtual policy networks and the global policy Web**

The global policy Web is the aggregate collection of policy-specific webpages populating the World Wide Web. Unlike the physical structure of the Internet on which it rests, the organizational structure of the Web is determined by the networked arrangement in which webpages are connected through hypertext. Network structure is unimpeded by hard wire or territory – the network is purely virtual, in the sense that communication is mediated by software and computer networks with no temporal or geographical boundaries. Participation on the global policy Web is unlimited, as any organization may publish information and link to another website. Conversely, attention is limited with some information garnering high levels of attention while other information goes unnoticed. A primary facet of influence on the global Web is visibility.

Hyperlinking on the Web is a strategic action with a hyperlink conferring informational authority (source credibility) on an alternative website's informational content (Smith et al., 1997). The argument here should be clearly distinguished from the attribution of influence to websites by volume of traffic, where the reasons for the visits are unclear. Even where the intention of the link is to demonstrate disagreement, it indicates acceptance of the linked website as an authoritative example of what is being disagreed with.

As computer scientists have demonstrated, the Web is not a random network but is rather scale-free, with a link structure characterized by weak ties between most webpages and strong ties among a select minority of highly connected sites. The tendency toward preferential attachment on the Web occurs when actors are biased towards hyperlinking with already highly connected websites, resulting in clustering and

non-uniform growth (Barabási, 2000). Consequently, some websites receive an anomalously large proportion of links producing a scale-free network structure. These same properties are found in any subset of the Web.

The growing use of the Web by international policy communities may be observed by studying virtual policy networks. VPNs are informational networks produced by groups of actors and institutions engaged in policy making activity both online and off (McNutt, 2006). The webpages that populate these online communities are connected through hyperlinks providing observable patterns of relations among policy actors on the Web. VPNs inherit the scale free structures of the Web with influence concentrated in a limited number of websites. However, VPNs are also, by definition, social networks where social relationships (hyperlinks) between nodes (websites) facilitate the exchange of resources (information) (van Poucke, 1979; Freeman, 2000; Knox et al., 2006).

All kinds of agents are using the Web to supplement existing policy-related activities and the recreation of these relationships online is producing VPNs. While we assume that each web-based policy sector will attract a larger discourse community that is attentive to policy activity, as well as a core policy network that enjoys greater influence in decision-making processes (Coleman and Skogstad, 1990; Montpetit, 2005), the policy Web is likely to be much less hierarchical than other kinds of policy arena.

The loss of hierarchical control associated with information sharing and multi-actor collaboration is highly characteristic of new modes of governance. It is tempting to suppose the global policy Web, like a social network, is an organized anarchy in which timing is the key to understanding outcomes (Cohen et al., 1972). However, while the technologies are relatively open and greatly facilitate the spread of new discourses, some actors continue to possess an unequal share of the resources and institutional capacities that allow them to *coordinate* through the policy Web. This being so, the global policy Web will show evidence of network structures that are the outcomes of the political struggle for nodality.

## Methods

The method used to analyse the structure of VPNs is referred to as hyperlink analysis. Hyperlink analysis is organized around two primary activities: crawling (data collection) and connectivity-based ranking (data analysis) (Park, 2003). Crawling refers to the process of collecting webpages using a computer-based algorithm designed to visits pages

and retrieve information that is recorded in a large database, while the connectivity-based ranking is a measurement used to evaluate the dependability of information in online environments. Webpage hosts publish various topical pages that link to alternative sources of information on the same subject. In terms of linking patterns and scale free link distribution, the Web follows traditional social network behaviours. Studying the behaviour of social networks on the Web allows for the quantification of an actor's online influence by measuring how much authority is conferred on them by other members of the network. The informational reputations of policy actors determine their link accumulation capacity, with trusted actors receiving a disproportionate share of inlinks (Hindmoor, 1998; Cook and Cooper, 2003; Jost and Jacob, 2004).

Traditional social network analysis typically sampled network populations using surveys where participants would self-report their associative relationships (Laumann and Knoke, 1987). In analysing VPNs, the most visible websites on the global policy Web are used to create a sample while hyperlinks serve the same function as self-reporting associative links. This project uses IssueCrawler, a Web engine and analysis package that gathers link information to map networks (Roger, 2006). The engine is a topic-specific crawler that collects relevant hyperlinks from webpages hosting content on a particular subject. To locate a VPN, the researcher enters a set of seeds (uniform resource locators (URLs)) into IssueCrawler, which then begins mapping the Web graph from the outgoing links of the initializing Web addresses. The analysis package provides a number of functions including network renderings, site interlinkages, adjacency matrices and ranked actor lists (McNally, 2005; Rogers, 2006; Bruns, 2007).

In this paper, linking behaviour is considered a form of political activity with a hyperlink deliberately chosen by an actor. Webpage hosts will publish various topical pages that provide links to alternative sources of information on the same subject. As already noted, studying linking behaviour in this way does not assume that the Web author agrees with the information being published; it does suggest that the cited webpage is relevant to the topic and that the authors view the content as related to the information they are publishing. Among government organizations, corporations, NGOs and policy institutes, there has been a strong tendency to publish partnership/membership lists that contain critical information concerning the ties among policy actors and the larger policy communities. These processes of social organization and web-based communication patterns leave observable patterns of change, coalition building and information flows in VPNs.

To initiate the crawl, the research must first choose seeds and set the network parameters according to the underlying research questions. The seeds are a preselected set of URLs which act as the starting point of the crawl, and it is from these seeds that the structure of each network is traced. As Bruns (2007) suggests, the seeds are 'equivalent to a set of coordinates around which geographical terrain is to be mapped, and it is therefore incumbent on the researcher to consider the implication of their seed choices'. After the seeds have been entered into the engine, IssueCrawler begins tracing the network by following several layers of outgoing links with the organization of hyperlinks determining which sites are visited and the course the crawl will take. IssueCrawler offers a number of crawler settings to specify network boundaries more concisely. This project began with the 15 most visible sites on the Web with all initializing nodes gathered from Google using a Boolean string search that names the policy field under consideration. The total number of inlinks received by the 15 nodes provides a large network sample of webpages from the subgraph being studied.

While the function of the algorithm is to collect relevant webpages, the purpose of the analysis package is to identify key actors and trace the link structures. The websites included in the VPN are identified using co-link analysis. This determines inclusion in the network through the pairing of hyperlinks to a target webpage (Ortega and Aguilloa, 2007; Qiu et al., 2008). As Thelwall (2004) explains, pages are co-linked 'when two Webpages both have inlinks from a third page' (5). In this case inclusion in the network requires that websites are connected by at least two of the starting URLs, which provides at minimum a loosely interconnected network (Bruns, 2007). Co-link analysis does not assume that direct communication must occur, but rather bases inclusion on associational relationships in which not all participants are aware of one another and different actors have different levels of influence.

## The global forest policy and forestry/climate change cases

### Competing discourses of global forest governance

Global forest politics presents an ideal case for discussing problems of governance. At one level, there are a number of undeniably material processes: the continuing destruction of the world's remaining large-scale forested ecosystems, especially in the moist tropics; issues of forest health and productivity in the developed world associated with environmental stress such as forest fragmentation, competition for water and air pollution; changing patterns of trade in forest products, with

long-established forest corporations and forest dependent communities experiencing fierce competition from lower cost producers and a flourishing trade in the products of illegal or unregulated logging. At another level, competing discourses, some of considerable sophistication, are linked to competing constellations of actors and practices providing very different interpretations of these processes and alternative policy prescriptions (Arts and Buizer, 2009). Finally, while there is a chapter about forests in Agenda 21, every subsequent effort to negotiate a legally binding international forest convention has failed, and the resulting regime contains a wide variety of alternative instruments and agreements characteristic of global environmental governance (Humphreys, 2006).

Tropical deforestation was the first issue to be addressed at the international level. On one side stood most of the tropical timber producing countries, whose governments tended to take a 'sovereigntist' position about forests and sought trade agreements providing development assistance and access to markets. On the other side stood a variety of northern NGOs and some consumer countries (especially those like the USA, the UK and Germany where environmental NGOs are well organized, well funded and well connected), who began a discourse of forests as a global commons in need of global governance arrangements that would link trade to forest practices (Humphreys, 2004).

The appearance of the sustainable development idea and the convening of the United Nations Conference on Environment and Development (UNCED) in 1992 provided a new occasion to air the differences of the two sides. The producer countries, with the general support of their G77 colleagues comprising the global 'South', accepted that deforestation posed a serious threat to sustainable development but continued to insist that the social, economic and environmental consequences of deforestation and forest degradation are local and would be addressed by themselves in the context of their goals, interests and priorities. Interference by the global North would be tolerated only if linked directly to development assistance and technology transfer. The North resisted this linkage and pressed, ultimately in vain, for a legally binding forest convention with a focus on conservation and sustainability. What they got instead was the delightfully Orwellian Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, a.k.a. the 'Forest Principles'.

Further efforts during the 1990s (featuring shifting constellations of governments and some interesting international diplomacy) all failed

to reach the elusive legally binding forest convention, although these efforts were not altogether without consequences. In the course of the negotiations, many developed countries with significant forest cover, including the USA, Canada and some EU member states, began to acknowledge that all was not entirely well with their own forest management practices, and promoted a unified discourse of Sustainable Forest Management (SFM) that would apply to all producer countries. Significant progress was made in elaborating SFM practices through criteria and indicators for different forest types.

With the help of the SFM idea, the Forest Principles were translated into Action Plans to which most governments readily signed up, happy in the knowledge that implementation and reporting requirements were minimal or non-existent. However, in an important discursive move, forest economists interpreted these implementation deficits as the consequence of a general market failure to value ecosystem services and to ensure, through transparent government and a system of secure property rights, that those who invested in long term forest management would see some return on their investment. Their efforts at translating SFM into the prevailing discourse of neo-liberalism resonated strongly with many international financial organizations, which began to form an increasingly important part of the forest policy network (Humphreys, 2009).

Perhaps most significantly of all, NGOs gradually lost confidence in the idea of a forest convention when it became clear to them that any agreement was likely to be so watered-down from their own goals – goals which now encompassed biodiversity conservation, protection of the rights of indigenous forest-dwelling peoples, and the provision of global ecological services such as carbon sequestration – as to amount to little more than the justification of business as usual. NGO efforts moved towards a twin-track strategy of conserving native forests through other global governance arrangements, such as the Conventions on Biological Diversity, Wetlands and Desertification, and influencing trade in forest products through private governance arrangements, such as certification and labelling. On this latter track, they have also supported international efforts to police the trade in forest products through the Convention on International Trade in Endangered Species (CITES) and the EU's Forest Law Enforcement, Governance and Trade (FLEGT), and worked to prevent a forest products trade agreement at the World Trade Organization (WTO). With private governance, at least, NGOs have been more successful than many originally supposed, both directly through their own certifying body, the Forest Stewardship Council

(FSC), and indirectly through the many competing certification standards that FSC has spawned (Tollefson et al., 2008). Thus, NGOs tended to withdraw from the international forest policy network in favour of their own specialized issue networks.

The Forestry Virtual Policy Networks (Figure 4.1) produced by the crawl shows clear evidence of the institutional structure of the global forest policy network as we have described it. The VPN reproduces a similar group of actors, with many producer countries present in the network including the USA, the UK, Canada and the EU, as well as the United Nations Forum on Forests, the WTO, and various other international organizations. The distribution of links in the network followed the general rule of preferential attachment with the top 18 most popular websites receiving 78 per cent of all incoming links, while the remaining 71 sites received only 22 per cent.

*Figure 4.1* Forestry Virtual Policy Network

On 16 August 2008 the web engine crawled 42, 884 webpages, identifying 89 websites in the network that received at least 20 inbound links from the policy community. Of the total 45,196 hyperlinks into the global forest policy VPN in 2008, UN organizations received 40.8 per cent of the links, governments (mainly the UK, EU and USA) received 32.9 per cent, other international organizations 6.7 per cent, and NGOs just 2.1 per cent. There were 19 other international organizzations in the VPN, six of which were financial organiations (plus the World Bank, accounting for only 1.6 per cent of links). There were 10 NGOs, with the Ford Foundation the most significant with around 1 per cent of links. The top ten websites are listed on Table 4.1.

**The emergence of a global forestry and climate change network**

The growing salience of global climate change policy has inevitably had an impact on forest governance and politics. There is a sense among some international organizations, NGOs and academics that climate-change mitigation might be the single issue necessary to promote the genuinely integrated approach to sustainability that has eluded most governance arrangements. It has introduced new actors, ideas and institutions while providing new strategic opportunities for longstanding members of the global forest policy community.

In particular, the structure of the climate change framework convention (with its distinction between Annex I and non-Annex I countries), recognizes the different responsibilities between developed countries

*Table 4.1* Forestry Virtual Policy Network inbound links to network websites

| Rank | Website | Inlinks |
|---|---|---|
| 1 | European Union Online | 6,918 |
| 2 | United Nations Environment Programme | 5,089 |
| 3 | United Nations | 4,104 |
| 4 | Forestry Commission of Great Britain | 3,036 |
| 5 | United Nations Educational, Scientific and Cultural Organization | 2,784 |
| 6 | United Kingdom Government | 2,301 |
| 7 | Food and Agriculture Organization of the United Nations | 1,506 |
| 8 | World Agroforestry Centre | 1,472 |
| 9 | United Nations Framework Convention on Climate Change | 1,264 |
| 10 | United Nations Systems of Organizations | 1,171 |

and the rest of the world, a distinction that the tropical timber producers have tried to institutionalize into global forestry governance since the earliest negotiations. However, the focus of the climate change arrangements on financial mechanisms has the potential to have a more ambiguous impact on forest governance arrangements. On the one hand, it provides the basis for the technology transfer and financial assistance that less-developed countries have been calling for; on the other hand, it is a powerful carrier of the neo-liberal discourse that many NGOs still find so suspect when devising governance arrangements for forests.

The negotiations leading up to the arrangements that will succeed the Kyoto Protocol after 2012 have put a new emphasis on the activities of non-Annex I countries, including reducing emissions from deforestation. The Action Plan agreed on in Bali included a discussion on Reduced Emissions from Deforestation and Degradation (REDD) that is likely to result in the employment of significant financial incentives in this connection. REDD is likely to rely on a market-based approach attached to existing carbon markets where, in addition to credits for avoided deforestation, forestry projects will also include payments for environmental services (PES) such as the provision of biodiversity, soil and watershed protection, and SFM at a project and at a broad landscape level (Meizlish and Brand, 2008; Portela et al., 2008). The effect of the growing convergence between developments in the two sets of governance arrangements has been to bring the 'undervalued ecosystem services' frame and the role of incentive-based policy instruments into prominence (Kanninen et al., 2007). As a United Nations Forum on Forests official put it, there seemed 'no other unifying theme' and, of course, SFM had already been elaborated in this way for a number of years.

As the VPN will clearly show, the principal beneficiary has been the World Bank. The Bank had a difficult time with forestry, at one point banning Bank lending to projects that involved any tropical forestry components in response to NGO criticisms that irresponsible lending policies were financing deforestation. During the 1990s, however, proponents of lending successfully argued that the ban simply tied the Bank's hands, removing the all-important tool of financial incentives to support sustainable forestry and surrendering the field to private lenders or impoverished local communities with suspect agendas. After an extensive evaluation of its previous approach to forests, the Bank adopted a revised Forest Strategy in 2002, locating its interest in forests within the three broad policy 'pillars' of alleviating poverty,

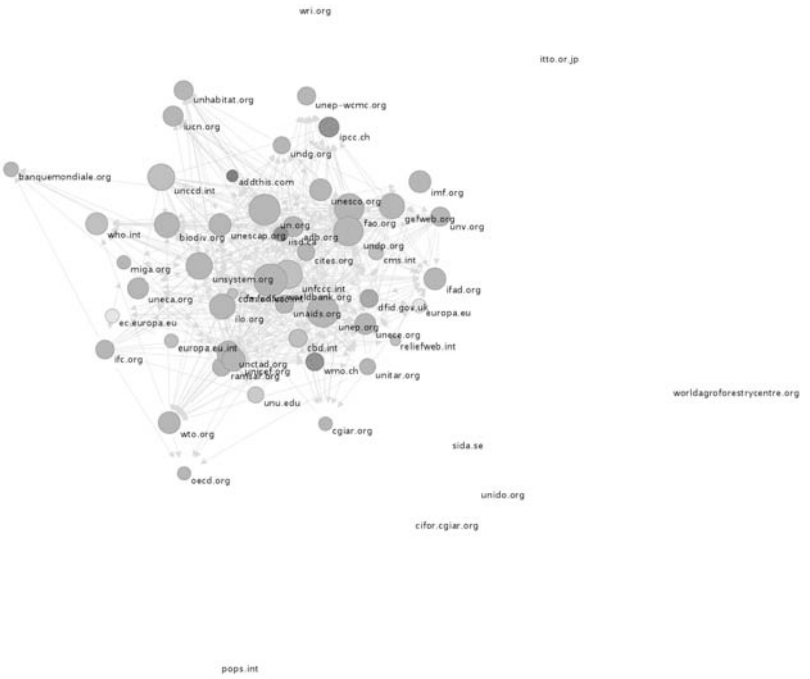


*Figure 4.2* Forestry and climate change

promoting sustainable economic development, and conserving the natural environment to protect local and global environmental services (Figure 4.2).

As expected, the Climate Change and Forestry VPN looks rather different from the Forestry VPN. International organizations and governments still dominate but the network is much more centralized and the nodal actor is the World Bank. On 9 August 2008 the web engine crawled 35,287 pages, identifying 81 websites in the network that received at least 20 inbound links. Of the total 54,103 hyperlinks into the global forest policy VPN in 2008, UN organizations received 38 per cent of the links, roughly comparable to the forest policy network, governments (mainly the UK, EU and USA again) were down substantially to 18.1 per cent, other international organizations accounted for 8.7 per cent, and NGOs fell to just 0.5 per cent. The World Bank alone accounted for 26.3 per cent of the inbound links. There were 18 other international organizations in the VPN, six of which were again financial organizations (plus the World Bank). There were a

*Table 4.2* Forestry and climate change Virtual Policy Network inbound links to network websites

| Rank | Website | Links |
|---|---|---|
| 1 | The World Bank | 11,771 |
| 2 | The United Nations | 5,721 |
| 3 | United States Forest Service | 4,556 |
| 4 | European Union Online | 4,275 |
| 5 | United Nations Environmental Programme | 3,163 |
| 6 | United Nations Framework Convention on Climate Change | 2,888 |
| 7 | Intergovernmental Panel on Climate Change | 1,953 |
| 8 | United Nations Systems of Organizations | 1,866 |
| 9 | United Nations Development Programme | 1,679 |
| 10 | World Meteorological Organization | 1,028 |

mere 5 NGOs, with the World Resources Institute the most significant. Link distribution in the VPN was again scale free, with the top 16 most popular websites receiving 79 per cent of all incoming links, while the remaining 65 sites received only 21 per cent. The top ten websites are listed on Table 4.2

## Analysis: nodality and the flow of information

In the introduction we acknowledged that claims about new 'global governance' arrangements and horizontal coordination are common enough but rarely backed up by detailed accounts of how governance actually takes place. The result is to reproduce a familiar claim from comparative public policy that governance arrangements involve a zero-sum power relationship between states and other actors, with gains by one party entailing equivalent losses to the other. We have argued instead that network governance is a new mode of coordination, where familiar resources are deployed in unfamiliar ways.

VPNs tend to reproduce similar offline dynamics in terms of policy actors' network ties, structural behaviours and power distributions (McNutt, 2010). Although the explanatory work is being done by structural features of the networks themselves, the sources of order are revealed as very traditional actors: governments and international organizations. Governance arrangements are organized around sets of influential actors who manage relationships and flows of information through their capacity to connect with other network participants. Those actors that enjoy a centralized structural position in the network

have more opportunity to create new relationships and strengthen existing ones. In addition, a centralized position also provides more chances of detecting information and affecting behaviour (Hood and Margetts, 2007). Central actors have the capacity to direct story lines by propagating preferred policy discourse and reinforcing the formulation of some ideas while discounting others. These nodal actors play a critical role in global governance by mediating between multiple policy communities (whose activities increasingly overlap in complex policy areas such as climate change) and by translating policy discourses from one context to another.

In networks, the exchange of information is a primary incentive for participating and creating opportunities, and is not used just to monitor innovative policy solutions but to identify issues and frame policy debate as well. All these activities thrive on access to novel information and the establishment of relations among previously unacquainted policy actors (Lin, 2005). As Guzzini and Neumann suggest in their introduction, there is an 'understandable move' here to explain this kind of exchange using a rationalist public choice paradigm. Within a network context, on this view, micro-level interactions between connected nodes in the network are motivated by individual desires to maximize utility and sustain positions of privilege (Scharpf, 1997). Similarly, network behaviour is trained by institutional impulses and the internal game-playing of individual participants. Policy actors have an incentive to capitalize on their positions of power; however patterns of individual behaviour are constrained by the collective goal of maximizing network utility. As such, how information flows is directed by individual exchange but constrained by the adoption of a particular logic that coincides with internal preference.

There is an undeniable gain in clarity by proceeding in this way. Information flows can be connected to to a relatively neglected aspect of network governance, namely nodality. However, while the public choice paradigm may provide an explanation of actor behaviours or 'networking', it is also possible to make a different explanatory move and seek to explain how a particular kind of order arises from network structure itself. Here, resources to support the operation of a node and the ability to institutionalize rules and practices, including discursive practices, are crucial. Governance capacity, in this context, would be associated not only with the network's volume of interlinkages but by how much any one actor is able to influence the direction and intensity of those links, in effect dominating policy framing and narratives for this issue area. The apparent disappearance of hierarchy will not amount

to loss of coordinative capacity. That capacity will simply be exercised in novel ways.

The advantage of studying web-based policy networks to illustrate this new mode of governance is not merely that VPNs are the direct expression of a new technology of governance. In addition, their structures reproduce classic social network behaviours, which are relatively easy to identify and compare using established network measures. In social networks, actors with the greatest number of ties also have greater influence on the network's inclination to adopt new ideas. Ahuja and Carley (1998) suggest that the level of hierarchy in virtual organizational structure 'is reflected by the degree to which relationships in a network are directly or indirectly reciprocal' and 'reflects the extent to which a network or group is organized around its focal point.' In a hierarchical network, actors must go through an intermediary to obtain information, providing more opportunities for a centralized actor to strategically manage the network.

Thus, the two variables used to measure the degree of discursive institutionalization in a network are network density and actor centralization. Network density measures the volume of links and, where density is low, policy learning and participatory debate are occurring, resulting in increased idea circulation and policy innovation. Higher densities represent the constraints of policy legacies. Density is calculated by summing the entire population of potential ties ($n(n-1)$ where $n =$ all nodes) as compared to the actual population of unidirectional links ($m/n(m)$, where $m =$ set of all edges or links). Previous studies have suggested that the average density of a VPN is approximately 0.10 (McNutt, 2006, 2008). By this standard both networks are fairly dense with the Forestry VPN at 0.18 and the Forestry and Climate Change VPN at 0.12; the emerging network, however, has more opportunity structures as it is comparatively characterized by weaker ties.

The second variable, actor centralization, measures each website's share of influence, which is calculated by summing all inbound links which the node received from the network population divided by the total number of inlinks (McNutt, 2008. Centrality scores are based on an actor's relative distribution of ties and used to compare an actor's influence within a single network. The Forestry VPN was centred on the European Union Online, which had a 0.16 degree of centralization. It was, however, less centralized than the Forestry and Climate Change VPN, where the World Bank had a 0.22 degree of centralization. Other than the presence of UN organizations, the lead institutional influences in the two networks is markedly different; the Forestry VPN is

*Table 4.3* Forestry Virtual Policy Network website centralization

| Rank | Website | Centralization |
|---|---|---|
| 1 | European Union Online | 0.16 |
| 2 | United Nations Environmental Protection Programme | 0.12 |
| 3 | United Nations | 0.10 |
| 4 | Forestry Commission of Great Britain | 0.07 |
| 5 | United Nations Educational, Scientific and Cultural Organization | 0.05 |
| 6 | UK Government | 0.05 |
| 7 | Food and Agriculture Organization of the United Nations | 0.04 |
| 8 | World Agroforestry Centre | 0.03 |
| 9 | United Nations Framework Convention on Climate Change | 0.03 |
| 10 | United Nations Systems of Organizations | 0.03 |

*Table 4.4* Forestry and climate change Virtual Policy Network website centralization

| Rank | Website | Links |
|---|---|---|
| 1 | The World Bank | 0.22 |
| 2 | The United Nations | 0.11 |
| 3 | United States Forest Service | 0.08 |
| 4 | European Union Online | 0.07 |
| 5 | United Nations Environmental Protection Programme | 0.06 |
| 6 | United Nations Framework Convention on Climate Change | 0.05 |
| 7 | Intergovernmental Panel on Climate Change | 0.04 |
| 8 | United Nations Systems of Organizations | 0.03 |
| 9 | United Nations Development Programme | 0.03 |
| 10 | World Meteorological Organization | 0.02 |

centralized around the EU and the UK (Table 4.3), while the World Bank and the USA are very influential in the Forestry and Climate Change VPN (Table 4.4). This would suggest that while the EU may have higher levels of influence in shaping forestry discourse, it has less ability to do so when the issue becomes one of forestry and climate change.

Clearly the governance theorists are correct in one sense: there is no single Intergovernmental Organization (IO) or state government that controls these two networks. However, combining the density and centralization variables demonstrates that the networks' structures do differ;

the Forestry VPN has greater density and lower network centralization while the Forestry and Climate Change network has lower density but is more centralized. High levels of density do not necessarily mean that innovation is not occurring and ideas are not being produced; it instead suggests that certain ideas receive more attention and the discursive practices of the actors with strong ties dominate story lines. In networks that have low levels of density but higher levels of actor centralization, such as the new network forming at the interface of forestry and climate change, the network is being guided by intermediaries directing diverse flows of information.

As suggested above, the central nodal websites in each network also varied, providing evidence of the impact of climate change ideas on the previous forestry discourse. The rising influence of the World Bank and the US Forest Service further weakens the roles of NGOs as competition for attention, and it has largely become a contest between Europe, the USA and two IOs. As such, the Forestry VPN has weaker ties but is less centralized around the dominant actor. In contrast, the Forestry and Climate Change VPN has more opportunity structures but is more centralized around the focal website.

## Conclusion

In this paper, we set out to demonstrate that analysing the structure of transnational VPNs will provide some insight into the new modes of coordination that explain the rise and persistence of global governance arrangements. In particular, we proposed that familiar policy strategies, such as seeking and exploiting nodality, are likely to be deployed in new ways, creating new relationships between traditional actors.

In terms of the questions about the diffusion of authority that are posed in this volume, VPN analysis demonstrates very clearly that new governance arrangements have not been created at the expense of the traditional agents of coordination: nation-states and the international organizations that they have created. These actors simply govern in new ways, in part by controlling and directing the information flows that support the characteristic discursive coalitions (Fischer, 2003) that frame policy problems. Authority has not diffused, in the sense of seeping away leaving the traditional state actors powerless in the face of global challenges, but is exercised in new ways.

While discussion of exactly how power has been used in global forest policy networks lies beyond the scope of this paper, there is a large literature suggesting that it has been used to pursue goals very familiar

to students of political economy. Thus the networks promote a shared discourse of SFM that protects the role of industrial forestry at the same time as enrolling local communities and indigenous peoples in a common pursuit of sustainability goals. SFM is implemented in part by an extensive and sophisticated set of criteria and indicators on which countries report to the Food and Agriculture Organization of the United Nations (FAO). Using SFM, industrial forestry actors have introduced their own schemes to certify timber products as coming from sustainably managed sources, in competition with the NGO sponsored FSC scheme based on very different principles, and there are other examples (Humphreys, 2006; Arts and Buizer, 2009). In another striking parallel to scepticism about the 'hollow state' thesis, the networks block alternative ideas and change at the global level while reaching down to protect industrial forestry on the ground, linking the global and the local directly. Power only seems to have *disappeared* if we look for it in the wrong place; rather, we find it diffused through networks.

The other side of this equation is the striking absence of NGO participation in the transnational policy networks, particularly in forestry and climate change. Humphreys (2004) argued that forest NGOs had been most successful at agenda setting, 'in challenging mainstream discourse and in shifting the ideological terrain of [forest] negotiations' (7). If so, we would expect greater participation by NGOs in forest/climate change where policy development is still very much involved in agenda setting and the discussion of alternatives, rather than in forest policy itself, a more mature policy area. Nonetheless, notwithstanding the already low levels of participation by NGOs in the forest policy VPN, the opposite is true, and further analysis would probably reveal that forest NGOs have their own issue-oriented VPNs that parallel their offline activities.

Exclusion reflects the value that the network members place on the information and expertise of the missing network actors. Having little to offer is to be relegated to the edges of the network, or excluded entirely. The VPNs analysed here are the kind described by Coleman and Perl (1999) as 'transnational-expert', first observed in the many studies of international banking and finance. Since the implementation of any agreements will largely fall on national policy communities, the role of the transnational expert network is to devise proposals that are acceptable in a variety of national contexts and to promote convergence on best practices through 'polydiffusion' (Mossberger and Hale, 2002). In the case of forestry and climate change, we see the effort at agenda setting and problem definition by the World Bank,

on the understanding that the target audience is comprised of other international organizations and key governments who are collaborating in the discursive project of framing the problem in neo-liberal technocratic terms (Schmidt and Radaelli, 2004; Humphreys, 2009).

Our conclusion thus provides a negative confirmation of the thesis proposed by Sending and Neumann (2006). In studying the role of non-state actors in global governance, they argued against the 'co-optation' thesis, stating that:

> [t]hese actors are not brought into the fold and as such deprived of their autonomy and as recognised representatives of 'civil society'. Rather, it is precisely their status as actors that possess expertise central to the task of governing and, much more importantly, the fact that they appear to be autonomous political subjects with a capacity for political will-formation that make them key subjects of, and allies in, governmental tasks. (668)

In the case studies, we have studied the self-reinforcing judgement of the networks that these actors do not possess expertise 'central to the task of governing', and that the information they provide, when filtered through the dominant discursive frames already circulating in the network, is useless or irrelevant, serving instead to exclude them. Governing functions are performed by international organizations, technical and research organizations and, surprisingly, key national governments who are still able to exploit the old governing resource of nodality transposed into a new virtual environment.

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# 5
# The Limits of Transnational Private Governance

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This chapter aims to contribute to recent scholarship on the conceptual and normative underpinnings of the diffusion of authority in global governance. The logic of action and the potential for change embodied in non-state actors has become a core feature of new forms of authority in the global realm. By exploring what we call *transnational private governance*, it provides theoretical and empirical insights into the ability of non-state actors to cooperate across borders in order to establish rules and standards of behaviour accepted as legitimate by agents not involved in their definition. Non-state actors not only formulate norms, but often also have a key role in their enforcement. Accordingly, the current privatization of rule-making and enforcement goes much further than traditional lobbying by allowing private actors an active role in regulation itself. It involves a range of agencies far beyond Intergovernmental Organizations (IOs), conventional non-governmental organizations (NGOs) and multinational enterprises. It moreover concerns issues whose scope is not only functional but which frequently impact upon contentious regulatory and distributive struggles. It furthermore covers a variety of mechanisms, from highly formal systems of power devolution to lax and informal platforms of interaction between private actors.

In the following, we will reflect on our recent findings on transnational private governance[1] in view of the four problematiques of governance as outlined in the introductory framework of this volume. As a background, this chapter first presents the distinct scholarly tradition in global political economy that has explored how economic and political logics intermingle in the understanding of this phenomenon. Studies in global political economy (GPE) try to identify constitutive patterns of authority mediating between the political and the economic

spheres of a transnational space by giving prime attention to channels of structural power across national economies. As mentioned in this volume's Introduction, this line of reasoning differs from governance studies that look for functional equivalent to governments and how such transnational constraints require new forms of steering capacities for informal coordination among nations. This leads us to provide *conceptual clarification* in order to define the social reality referred to as transnational private governance and discuss its *normative implications* that commonly raise many concerns. In our attempt to further clarify the conceptual and normative underpinnings of transnational private governance, we outline a framework of analysis that sheds light on each of the four problematiques in which the Introduction situates the articulation between the diffusion of power and governance. The framework of analysis includes categories which offer a systematic yet flexible approach to understanding the range of agencies, the functional scope, the mechanisms of coordination and the normative content of transnational private governance.

The core contention of this chapter is that transnational private governance is subject to important limits. While conventional analyses tend to highlight the newness and the innovative character of these forms of governance, we unambiguously question this view in emphasizing limitations in two regards. The limits to transnational private governance refer first to the degree to which this phenomenon is really private, transnationalized and confined to governance per se. Second, the normative shortcomings of transnational private governance clearly hinder its ability to embody procedural innovation in policy processes and to solve large socio-economic concerns.

## Transnational private governance and global political economy

From a global political economy perspective, most contributions to the debate on transnational private governance seem to be typical examples of problem-solving theories. Based on Robert Cox's (1981, 1987) famous dictum 'theory is always *for* someone and *for* some purpose' (emphasis in original), GPE scholars identify those studies as attempts to make the existing capitalist system work more smoothly. From a critical standpoint, GPE approaches are concerned with how the existing order came into being and, given the manifold exploitative features of capitalism, how to conceive its potential change. The focus is to place transnational private governance in the broader historical context of

capitalist development. The line that separates public from private governance is not fixed and should be understood as contingent in time and space. As stressed by Susan Strange in her pioneer study on the diffusion of power, one should rather see a continuum between state and non-state authority, 'whose relation to governments [may be] variable or ambiguous' (Strange, 1996, p. 94). For example, rules for commercial transactions across boundaries were first developed by private actors (merchants) and only later adopted by states. State ownership of the economy was not widespread in earlier times and private firms such as the East India Company had broad regulatory competences. While stricter separation between the public and the private began with the industrial revolution, it is only in the late 20th century (and within the world of the Organisation for Economic Co-operation and Development (OECD)) that it has taken on the clear character it has today.

As outlined in the introduction to this volume, by setting these assumptions within the broader framework of capitalism, GPE scholars focus on structural forces and power relations, in particular the structural power of capital. A structural conception of power emphasizes the environment in which strategic interactions take place. The rise of private authority then points towards the development of the competition state, the deterritorialization of capital and the related process of flexible accumulation (Cerny, 1990; Graz, 2006; Sassen, 2006). The form and the content of regulation should therefore not be treated separately from each other. Mechanisms and forms of private governance have implications beyond functional issues of market regulation and social justice.

The broadest structural feature defining the empirical scope of transnational private governance thus relates to a distinct social system of production. Transnational private governance should be situated in a particular phase of development of modern capitalism. Various accounts have provided insightful analyses of how a new social system of production, sometimes called post-Fordism, has undermined the role previously detained by the state in the distribution of productivity gains between capital and labour on a national basis (Hollingsworth and Boyer, 1997). Such a restructuring of the economic and political spheres across borders is also known as neo-liberalism. No single criterion could on its own sum up what neo-liberalism is. It nonetheless reflects the intellectual climate, the material reality and political project behind a form of globalization which sets individual freedom and ownership as supreme rights. It does this by reinforcing the domination of capital over labour, especially the power of finance, throughout a

world economy expected to be free from state-imposed restrictions. As Murphy (2002: xiv) points out, 'the social forces that have continued to back the neoliberal agenda are truly transnational, which implies that to understand contemporary global governance we need to develop a class analysis that transcends national boundaries'. At the same time, it appears that the social system of production underpinning transnational private governance is prone to involve stakeholders more broadly defined than in traditional class-based tripartism between labour, capital and the state. The wide range of diverse actors involved in the proliferation of codes of conduct is, for instance, significant of this shift away from the central role of the state in the Fordist era.

Besides the mere structural significance of transnational private governance for legitimizing neo-liberalism, GPE approaches thus often focus on a wide range of agency. For instance, coordination service firms such as rating agencies, institutional investors, trade exchanges and investment banks, as well as multinational law, accounting, insurance and management consultancy firms enjoy considerable authority over others, by setting and enforcing distinct standards of acceptable behaviour. Institutional investors develop and enforce codes for corporate conduct that are based on crucial elements of the neo-liberal economic model, such as the predominance of shareholder value. Rating agencies shape the behaviour of market participants by limiting the range of legitimate practices for companies based on similar principles – otherwise, companies risk a downgrading of their debt and, correspondingly, higher costs for refinancing. Furthermore, private norms developed by accountancy firms undermine alternatives to the neo-liberal business model, such as the long-term perspectives of German business based on considerable hidden reserves. These and other types of coordination service firms not only further the neo-liberal orthodoxy, but also are supported in this function by states. The concept of transnational private governance thus presumes a form of global hybrid authority which prompts increasing concerns about the scope of this new type of influence and the opacity of the means involved (Graz, 2006).

Most GPE studies fruitfully situate the historical, political and economic context of transnational private governance and present considerable explanatory potential in terms of structural forces and power relations. As can be inferred from the Introduction, four distinct issues are particularly relevant here: the range of agencies, the scope of issues concerned, the distinct mechanisms used in such diffusion of power and, finally, their normative implications. The following conceptual clarification therefore aims to better define and circumscribe the social

reality referred to as transnational private governance. Moreover, as social action is inherently based on a set of shared or conflicting principles, the phenomenon of transnational private governance ultimately calls for a more elaborate account of its normative implications. Highlighting these four issues will allow examination of transnational private governance from a comprehensive yet differentiated perspective which embraces conceptual and normative levels of analysis.

While transnational private governance may, and certainly does, mean different things to different authors, the shared understanding of what it implies for the analysis of ongoing transformations of the contemporary world should not be underestimated. Referring to one concept, instead of any other among existing studies, places a distinct set of social phenomena at centre stage. It produces a particular view of social phenomena. The key question, then, is: what analytical relevance does the concept of transnational private governance offer to the social sciences in general, and to global political economy in particular? As the following account should make clear, each term of the concept highlights a major change in the material and symbolic organization of our societies. The notion of transnational – rather than international – assumes foundational realignments in social spaces transcending national borders. The term 'private' in itself stresses a substantial tilt in the relations between public and private agency. Finally, to dwell on governance instead of government supposes a profound reconfiguration of the role of the state in international affairs. This said, a central tenet of this chapter is that transnational private governance is something of an abuse of language as is it neither fully transnational, nor entirely private or excluding governments in its logic of action and power. And this has distinct normative implications.

## Scope

As Anderson (1991) and many others have pointed out, the assumed spatial correlation between the nation and the state has never existed, neither have distinct spaces separating discrete domestic national economies. The notion of transnational should therefore be situated beyond a mere inside/outside dichotomy. In this sense, it might be relevant to disaggregate further the notion between the functional and spatial scope involved in current reconfigurations of the political space.

First, the *functional scope* of the practices concerned cuts across the territorial basis of political institutions with a propensity to merge subnational, national, international and supranational arenas. What is

significant in the spatial implication of transnational governance is less the deterritorialization of state sovereignty as such, as that the deterritorialization process brings to light a reorganization of the logic at work in the production of space which encroaches upon the conflicting sources of authority on a transnational basis. As Saskia Sassen repeatedly emphasizes in her comprehensive study on the 'denationalization' of state agendas and the privatization of norm-making, 'the rise of private authority is not simply an external force that constraints the state. It is partly endogenous to the state' (Sassen, 2006, p. 223). Thus, a core question to empirical research is the extent to which transnational private authority implies a shift to functional forms of governance and, by the same token, the degree of territorial basis it inflexibly retains. So far, we are able to highlight a limited number of factors that are crucial in this regard, such as different forms of competition or different policy types.

Distinct forms of competition enhance the rise of transnational private governance. While GPE approaches may be familiar with the argument, they often lack detailed analysis of the issues at stake. Various studies have, nonetheless, analysed how transformations in the organization of markets can reinforce the ability of private actors to play a more direct role in rule setting and enforcement. From a regulation-theory perspective, Petit and others contend that changes in forms of competition on an international basis are even so significant that they now tend to play the central role that the wage–labour nexus used to play in the domestic arena under Fordism (Petit, 1999; Coriat, et al., 2006; Dannreuther and Petit, 2006). Drawing upon economic sociology and business studies on alliance capitalism (Dunning, 1997), Portnoy (1999) also argues that strategic alliances among multinational corporations (MNCs) not only reshape the competitive environment by expanding industrial networks beyond national borders in establishing so-called transnational industrial orders, but also promote new forms of political management in which internationally organized industries are heavily involved. As mentioned above, the type of company matters; big manufacturing companies with well-known brand names are expected to be more involved in transnational private governance than others. Besides the degree and the type of competition, as well as the type and size of firms involved, a market organized along global value chains supposing an extreme disaggregation of the production process and its relations to the consumer requires heavy coordination mechanisms. In this respect, forms of competition also relate to the coherence provided by coordination service firms. Hence, in order to understand which form of competition is most likely to enhance

transnational private governance, we should look not only at the structure of the market, but also the size and types of firms involved. The chapters that follow will fully illustrate that, contrary to what is often assumed, regulatory innovation in transnational private governance is far from echoing highly competitive markets. Rather it takes place in an oligopolistic environment, characterized by limited competition and dominated by big firms active in coordination services and highly dependent on global value chains.

An aspect which lies at the juncture of structural conditions and explanations focused on the action of those involved in transnational private governance is the type of policy concerned. The effect that the specific problem at hand may have on the ability of policy networks to influence domestic politics was pointed out a long time ago (Lowi, 1972). In this perspective, redistributive policies are far less likely to be dealt with by these networks because of their high degree of politization. In the same vein, scholarship on transnational policy assumes that economic policies perceived as redistributive lead to intergovernmental rather than transgovernmental relations. Social groups that feel disadvantaged would mobilize against these policies and therefore shift decision-making from the technical and bureaucratic transgovernmental to the more political intergovernmental level (Keohane and Nye, 1974, p. 129; Risse-Kappen, 1995, p. 8). Conversely, regulatory policies would be more conducive to transnational governance as they are considered to incur heavy resource dependency between actors who regulate and are regulated – the former needing, for instance, information from the latter, and the latter formal recognition from the former in order to pursue their interests. This scholarship, however, remains focused on public policies and public agencies. An important avenue of reasoning then is to explore how distinct policy types are decisive in the privatization of transnational governance. While transnational private governance is more likely to occur with regulatory than redistributive policies, the distinction is to some extent misleading, as redistributive concerns can never be totally kept out of regulatory issues. Different types of regulatory issues may also affect with great variance the ability of transnational private governance to become effective (Graz and Nölke, 2008).

Second, we should look at the *spatial scope* of the transfers of authority resulting from transnational private governance. The term transnational supposes the projection of an action beyond the territorial basis of state sovereignty, which involves social relations both *between* and *across* states. Yet this does not affect the whole world in the same way. We can

expect differences according to the size of the geographic scale observed, whether global, regional or bilateral. Moreover, the spatial scope affected by such transnational processes is also likely to follow the main lines of fractures and hierarchies of contemporary capitalism. The transnational dimension of this type of governance is structured along an inclusive/exclusive line of demarcation, with clear differentiation in North–South relations and centre–periphery dynamics. As Duffield (2001) has pointed out, this may have deep implications on our understanding of the development–security nexus, insofar as such sophisticated forms of governance increasingly encounter non-liberal political complexes at their margins affected by so-called new wars. Thus, paraphrasing Lipschutz and Rowe (2005), we should be reminded that there is little if any global regulation for the rest of us. Brand (2005, p. 171) coined the concept of 'fragmented hegemony' in the same vein, to emphasize that what could be observed in the centre could not be seen in North–South relations. More specifically, the spatial scope of transnational private governance appears to be influenced by factors such as international institutional embeddedness.

The distinct role that institutional constraints can play on political economy issues has now been extensively explored in historical institutionalist approaches on varieties of capitalism, with strong national trajectories and regulatory sequences between the domestic and international spheres (Hall and Soskice, 2001). In contrast to domestic forms of governance analysed from an international basis, such means of creating order and setting rules are conventionally considered as weakly institutionalized when projected on a transnational spectrum – apart from some specialized issues areas. This assumption is unmistakably reinforced when *private* forms of governance are involved. An extreme illustration of this view is to identify the EU governance system as a 'multi-level, non-hierarchical, deliberative and apolitical governance, via a complex web of public/private networks and quasi autonomous executive agencies' (Hix, 1998, p. 54). Yet, just as many studies have highlighted that the EU governance systems are backed up by a large set of institutional constraints, the question is not so much whether transnational private governance is embedded in international institutions, but rather in which institutions, at which level, granted with what kind of enforcement power and authority. In this respect, a core task in analysing transnational private governance is to identify in more detail the degree along which it is institutionally embedded on an international plane. As the chapters put together in Graz and Nölke (2008) show in detail, the picture is indeed quite different according

to whether we are looking at transnational private governance within the ambit of the EU governance system of Internet domain names or accounting standards for listed companies, or at the UN framework on food labelling or workers rights, not to mention global banking regulation and supervision under the umbrella of the Bank for International Settlements.

## Agency

Many analyses have emphasized that governance refers to a new way to seek arrangements by systematically involving private actors, whether in the domestic or international arena (Murphy, 2000; Pierre and Peters, 2000). Yet from a historical perspective, this is not so new. The state, as we now know it, related to a given territory, controlling a closely defined population whose sovereignty is allegedly embodied in it, centralizing monetary emission in conjunction with private agents – all this is a creation of the last third of the 19th century in the Western world. As Halliday points out, 'all that appears to be non-state is not so independent of the state, just as all that is new may not be as novel' (Halliday, 2001). What is new with the involvement of private actors in transnational governance issues is not so much the extent and intensity of their influence as how some of them have managed to develop a new relationship with the polity. Three issues are at stake here: the range of private actors concerned, the resources at their disposal and the support of the state.

As regards the first issue, a better understanding of the *range of private actors* involved in transnational governance practices undoubtedly depends on how we define the private/public distinction. While accounts may vary on how the development of capitalism, the modern state and civil society have shaped social relations along a separation between a private and a public sphere, scholarship in global political economy has emphasized how both spheres should be analysed as closely related, reflecting two faces of the same coin. The distinction can be understood as between a public sphere, which confers inclusive and universalistic rights of citizenship, and a private sphere, which brings into play such rights in order to provide exclusive and bounded contractual rights. From this perspective, the range of actors in the private sphere is larger than firms – what we refer to as the 'private sector' in narrow economic terms – and individuals from a similarly narrow behaviourist social theory. Trade unions, activists, class or gender organizations, professional associations, cadres and experts organized in

ad-hoc bodies, advocacy or policy networks, elite clubs, religious groups and guerrillas are all part of the private sphere. This implies that the 'private' potentially includes any collective actor organized through formal or informal contractual relations within the ambit of civil society. As Colàs (2002, p. 26) argues, civil society should not be conceived in a crude dichotomy with the modern state, but rather as 'an arena of social life differentiated from the state while simultaneously revealing its complex interaction with the state . . . [which] reveals a number of international factors in its genesis and development'. The question for empirical research, then, is which private actors are most prominently involved in transnational private governance – can we assume that it involves all types of private actors, or only a chosen few?

This brings us to our second point: only actors mobilizing a minimal amount of resources are able to order via transnational private governance. *Resources* mobilized by agents into a specific logic of action are a central issue in analysing policy processes. Financial capabilities, the use of force, loyalty, information, prestige and the like all belong to various explanations aimed at identifying a distinct set of resources reinforcing the ability of actors to define outcomes in particular issue areas. In contrast to conventional approaches in international relations, resource-dependency theories on transnational policy networks give considerable space to the activity of private actors, yet they stop short of private self-regulation mechanisms and do not specifically address political economy issues (Nölke, 1995, 2000). In the same vein, sociological approaches on resource dependencies in inter-organizational networks help to analyse the exchange of material and immaterial resources between mutually and often asymmetrically dependent organizations, especially large firms. As the outcome of resource exchanges usually transcends the corporate actors on which those approaches concentrate, it may as well correspond to a precondition for the development of transnational private governance. Typical resources exchanged in policy networks include finance, information and legitimacy. In contrast to the domestic policy process, transnational private governance would therefore more likely be driven by resources predominantly available by private actors, involving consensual rather than coercive action, and implementing a functional scope across borders. This assumption is closely related to conventional accounts of the inability of the state to undertake the complex tasks involved in governance and its reliance on the expertise of private actors and the knowledge of professional organizations to deal satisfactorily with such policies; however, for private actors, building a consensus on complex issues across borders also

depends upon resources others than knowledge and expertise, including reputation or credibility among the immaterial resources, financial capabilities and leverage power in the domain of material resources.

While the private dimension of governance refers to a process involving actors other than states, it also relies on an explicit or implicit *state recognition*. Recent scholarship shares the assumption that the state remains a central feature in understanding the governance functions undertaken by private actors in both domestic and international affairs. Explanations may differ according to competing theoretical approaches. For instance, scholars with a background in neo-corporatist studies would emphasize the 'shadow of hierarchy' required for effective self-regulation (Héritier, 2002), while transnational historical materialists would explain how private actors and the state should be understood as two different expressions of a larger configuration of social forces (see e.g. Gill, 1993; Holman, 2008). While there may be sharp disagreements as to the sense attributed to state recognition, there is little disagreement concerning the overall complementary and subsidiary role taken by private actors in regard to state functions (Avant, et al., 2010; Djelic and Quack, 2010; Ougaard and Leander, 2010).

## Governance: The mechanisms of ordering

It is widely acknowledged that the notion of governance has gained currency since the 1970s in order to appraise various forms of political reorganization at a distance from traditional governmental and intergovernmental decision-making. This is what the catchphrase 'governance without government' supposedly conveys. The notion of governance is also associated with the new institutional forms being explored with the demise of Fordism, where the state was pivotal in securing a fair distribution of high-productivity gains between capital and labour so as to ensure a relatively stable growth rate of the domestic economy. The concept of governance has thus achieved prominence as both a normative compass for change claimed to be closer to the people ('good governance') and an analytical tool to explore a supposed retreat of the state and the emergence of a new form of polity ('multi-level governance'). Speaking of *governance* thus requires specifying the type of power relations and the scope of regulatory practices concerned. Here again, three closely related issues are involved: first, the definition of the *logic of power* involved in governance impacts upon the scope of regulatory practices under investigation; second, the *logic of action* implemented according to distinct procedures within the framework of

such power relations; third, the exercise of power via transnational private governance relies on the implicit consent of those governed. One important factor to be considered here is a basic homogeneity of values among those participating.

As far as the *logic of power* is concerned, most analytical accounts of governance rely on a definition focused on consensual arrangements, intentionally agreed upon by states and non-state actors directly involved in setting and enforcing rules. Such an understanding replicates a relational view on power, which explores the ability of A to get B to do what he wants. Analysing actual decision-making, its processes, procedures and potential biases from an actor-centred perspective, it mostly ignores, however, the structural underpinning of power relations, in which social forces can durably modify the environment of their practices in their own favour. Governance should therefore be situated at the juncture of consensual and coercive power, involving intentional agreement as well as unintentional domination. Such an understanding of the notion of governance calls to mind Stephen Lukes' seminal conceptualization of power, involving not only observable overt and covert conflicts, but also latent conflicts resulting from more deeper and structural contradictions in existing power relations (Lukes, 2005). Just as Lukes' conceptualization of power was inspired by the writings of Antonio Gramsci on the state, the logic of power at stake in governance can be considered as closely related to the Gramscian concept of hegemony. Hegemony is understood as a form of social domination in which one group exercises leadership and imposes its projects through the explicit or tacit consent of all those drawn into the coalition of social forces identifying their particular interest as the general interest. Recognizing the logic of power in governance issues as an ongoing combination of consensus and coercion, reflecting intentional and unintentional domination alike, leads us to enlarge the scope of regulatory practices concerned. Governance in this respect encompasses both the narrow sense of regulation, deregulation or re-regulation on specific issue areas and the institutional framework embedding such rules, and the larger sense of self-reproducing unintentional domination through which a structure of thought and action can be so internalized that they appear as natural and inevitable.

Within the framework of such power relations, our second point relates to the *logic of action* implemented according to distinct procedures. Specifying the logic of action is all the more important in governance studies, as these often regard the type of procedures involved as the most important feature of this new way of organizing

our societies. A shared assumption in the literature is that informal and non-hierarchical forms of governance are increasingly replacing command-and-control hierarchical and formal types of state regulation. Non-hierarchical 'steering modes' based on private–public partnerships are, for instance, a central feature in the debate on the legitimacy of this type of governance (Risse, 2011). In a different vein, the World Economic Forum can be viewed as a critical case of the potential authority exercised on a global scale by informal and weakly institutionalized non-state actors such as transnational élite clubs. Yet, even in such a case, there are intrinsic limits in loosely informal arrangements divorced from the legitimate institutions of public life (Graz, 2003). Similarly, non-hierarchical procedures such as those analysed by principal agent approaches or those implemented in private–public partnerships often need the 'shadow of hierarchy' to be effective. It makes little sense to view the logic of action underpinning governance as distinctively informal and non-hierarchical. Governance more accurately sets in motion a logic of action inventing new channels in the relations between formal and informal procedures, as well as hierarchical and non-hierarchical mechanisms of social action.

Finally, both comparative and global political economy scholarship have stressed how a wide range of policies related to what we call globalization reflect an increased homogeneity of values among the relatively circumscribed group of actors able to positively identify themselves as part of the process. As mentioned above, comparative studies have drawn lessons from constructivist approaches as to how the privatization of governance mirrors middle-class preferences towards post-materialist orientations. They would also stress that 'quite naturally, intergovernmental groups prefer delegating functions to well known and reliable partners' (Ronit, 2001, p. 570). Global political economy scholars, for their part, place the homogeneity of values in the larger picture of the achievement of hegemony. According to some of them, the type of power exercised through transnational private governance echoes how 'private councils [such as the Trilateral Commission or the World Economic Forum] are part of a much wider international process of elite familiarisation and fraternisation, mutual education and, broadly speaking, networking' (Gill, 1990, p. 122). In respect of the strong institutional and state embeddedness of transnational private governance, shared values are not restricted to private actors but impinge upon actors more closely related to the public sphere. Among the factors fostering cooperative agreements in the complex committee work undertaken in European governance, Eichner and Majone for

instance coined the notion of *copinage technocratique* [*sic*] in order to explain why 'actors on the technical level share more common interests than political actors' (quoted in Egan, 2001, p. 162). More generally, as Djelic and Sahlin-Andersson (2006, p. 23) underscore in a volume on the institutional dynamics of regulation in transnational governance, there are 'powerful institutional forces that altogether constitute a transnational culture or meaning system'. Among such forces, contributors to that volume borrow from the world society perspective and the Bourdieusian field approach to pay special attention to the processes of scientization, marketization, formal organizing, moral rationalization and reinvented democratization. Ultimately, the argument that a high degree of homogeneity of values is likely to be a precondition in transnational private governance takes us back to the sociology of elites (Scott, 1990). Classical studies by Pareto, Mosca, Michels or Mills considered that the power of a 'governing elite', a 'political class', an 'oligarchy, or a 'power élite' depended upon a distinct organizational feature, in particular the shared consciousness of being a group with distinct interests, institutional positions enabling the achievement of such interests, and a capacity for coordination facilitating greater unity of action through planning. This so-called Machiavellian tradition of elite analysis emphasizes the concept of *control* over the means of production in contrast to ownership in the orthodox Marxian class analysis, just as transnational cadre analyses rely on a comprehensive concept to understand the key role they play in present times (Pijl, 2004, 2007).

## Normative implications

Transnational private governance not only requires conceptual clarification, but also an examination of its normative implications to better understand the current shift in the organization of the political economy of contemporary capitalism. The notion is indeed often used to support the participation of new actors in the policy process, assuming that they would better tackle complex sector issues. If left to market self-regulation or plain state regulation, the argument goes, the states would remain unstable at best, or even unable to deliver social justice. In this respect, transnational private governance is identified as a procedural innovation in policy processes suited to solve distinct socio-economic concerns on a cross-border basis. The conditions under which such a claim can be sustained have gained the utmost importance in the governance debate. Yet, unsurprisingly, scholars remain deeply divided in their conclusions. For instance, Haufler (2001, p. 4) states: 'Voluntary

standard setting by firms is a logical response to the ambiguities and uncertainties of the current global system. It responds to societal pressure, while avoiding rigid government interference. It is voluntary and therefore can be applied in a flexible manner. It is potentially global in scope, and if adopted widely, would reduce costs, increase efficiency, and prevent other corporations from gaining competitive advantage'. In contrast, Picciotto (2000, p. 162) reminds us that 'the growth of international regulatory or governance networks does not constitute the reduction of the scope of international politics, but rather its pursuits by other means. Certainly, it may entail an attempt to "depoliticize" issues, by deploying scientific, managerial or professional techniques and basing their solution on universalizing discourses.' In order to shed light on such conflicting arguments, the following discussion attempts to explain the normative implications of transnational private governance in conjunction with two interrelated issues: the substantial socio-economic concerns on the one hand, and procedural innovation in the polity on the other.

As mentioned in the introduction to this volume, different theoretical traditions disagree on the normative assessment of the *socio-economic consequences* of transnational private governance. While institutionalist scholars, such as those working on regime theory, usually praise the problem-solving outcome of transnational private governance in distinct areas, more structuralist GPE approaches lay emphasis on how it contributes to stabilizing a neo-liberal socio-economic order considered as inherently unjust. The detailed empirical studies brought together in our previous volume (Graz and Nölke, 2008) help to probe in some respects the persuasiveness of each perspective. While different research agendas can benefit from each other's analytical insights and empirical evidence, distinct ontological, epistemological and theoretical underpinnings will of course remain. As Cox reminds us, problem-solving approaches are 'useful for correcting dysfunctions and maintaining order in the whole. [Yet,] a different kind of knowledge is required in order to understand how historical change has come about and how change can be brought' (Cox, 2002 p. xii). We should thus first clarify the more specific claims of each perspective.

For researchers working on the environment, labour standards or human rights, transnational private governance is frequently seen as the most realistic option to improve the state of affairs in non-OECD countries. Given the unwillingness of governments and the inability of IOs to provide satisfactory responses, private governance based on corporate social responsibility schemes is thought to be a pragmatic remedy for some of the most pressing concerns (Vogel, 2009). In a

slightly different perspective, transnational private governance is also perceived as an important contribution for the provision of problem-solving mechanisms in situations where governments or IOs are seen as too inflexible to provide for effective regulation. This is particularly true for fast-moving sectors such as in ICT (Salter, 1999; Mathiason, 2009) or finance (Sinclair, 2005; Germain, 2010). Yet, more often than not, these regulatory practices remain ambivalent. A core question then is whether transnational private governance is really able to solve large societal problems such as environmental degradation, human rights or systemic risks in finance.

Even if transnational private governance could be considered as successful according to the criteria outlined above, there is still a larger problem, namely its potentially stabilizing role for the current order of neo-liberal capitalism. The focus of the critique here explicitly targets the reasons for which transnational private governance would be praised as an efficient problem-solving policy, that is, the substitution of private regulation for public national or intergovernmental policy. Against this background, transnational private governance reflects an attempt to permanently fix the current weak role of public international regulation of business, in the same vein as other forms of contemporary global governance (Gill, 1998; Picciotto, 2000; Bayart, 2004; Overbeek, 2004). This is also true for the transnational regulation of people, the focus of which has raised much attention among Foucaldian scholars (Rahel, 2011). Having transnational private governance in place legitimizes the retreat of the state or at least its unwillingness to tackle certain issues by intergovernmental regulation. This, in turn, works as a shield against popular calls for business re-regulation and popular re-empowerment in case of major discontent with economic globalization. Thus, private governance is supposed to make it more difficult for labour unions and social movements to mobilize, whereas business preference for the existing socio-economic order is being privileged. Correspondingly, empirical studies suggest that private governance often prevents public regulation and that the substance of regulation is particularly in line with the preferences of business (Graz and Nölke, 2008).

Both the scholarly and public debates are concerned by the lack of *democratic legitimacy* of transnational private governance. Governance is usually not primarily conceived for its ability to democratize policy-making, but rather as a solution to functional problems on specific issues requiring collective action. Yet, as legal scholars would put it, the new phenomenon of transnational governance must not make us forget our old questions, such as who bears the responsibility for governance without a government (Joerges et al., 2004; Joerges and Falke,

2011)? In exploring the relationship between democracy and governance from a cross-level analysis involving intra-national, European and international arenas, Papadopoulos and Benz (2006) draw important lessons in assuming that the potential for improving the democratic legitimacy of governance lies in agreeing on the proper length and components of the chain of delegation in which the relationship between representatives and represented takes place. They also remind us that the inclusion of private actors, such as those from civil society or the expert communities, does not imply per se more democratic legitimacy of governance. In conclusion, they highlight how flawed governance can be when lacking linkages to democratic institutions (Ibid. pp. 290–292). These accounts will undoubtedly help further research focused on policy-making implications of governance practices in democratic systems. Yet, they stop short of political economy considerations as such. Transnational private governance and the globalization of capitalism are two inseparable aspects of the contemporary world. Normative considerations on the significance of the former also refer to the transformation of the latter. An adequate understanding of concerns raised by large segments of population affected in their everyday life in such a context is crucial to evaluate the normative constraints and opportunities presented by transnational private governance for a progressive change in the contemporary world. To this end, we need to clarify the closely related issues of sovereignty and legitimacy.

Can public authorities always control the activities of transnational private governance or reverse the allocation of governance tasks to private actors? Most accounts of transnational private governance clearly challenge the traditional Weberian legal–rational view of state bureaucracies organized along distinct functional tasks. They emphasize the lack of clear distinction between an authority founded on scientific knowledge, technical expertise and market power on the one hand, and an authority built upon a formal mandate setting procedures for delegating the sovereign power of political subjects, on the other. Even those sceptical of the assumption that business interests find ways to 'capture the state' in such a context examine the question of industry influence (Majone, 2001; Jordana and Levi-Faur, 2005; Mattli and Woods, 2009). As Egan (2001, p. 33) points out, although regulatory studies 'are concerned with effective mechanisms to control bureaucratic discretion, the same questions have not yet been addressed with regard to self regulatory mechanisms and private governance'. The hybrid reconfiguration of the relationship between the public and the private spheres underway in transnational private governance may have important implications.

If political capture is defined more broadly than effects on outcomes, the more structural infringement of transnational private governance on the sovereign rights of citizens refers to a private control on resources and to the capacity of private actors to durably modify the environment of their practices in their own favour. For example, in the domain of technical specifications, consumers or labour representatives are at pains to compete with business interests regarding the time, money and expert knowledge required to fully take part at the global level in the procedures defined for setting and assessing technical standards such as those of the International Organization for Standardization (ISO) (Hauert, 2010). In many ways, the delegation of sovereign citizens' rights to non-elected bodies corresponds to a reinvention of corporatism: private interest groups and other private organizations are gaining public status and direct access to the political system in order to supposedly secure a stronger consensus. As many critics have argued, the theory of corporatism fails to capture the full nature of the framework of power in which these practices take place. As Ottaway (2001, p. 266) points out, 'it is doubtful that close cooperation between essentially unrepresentative organizations [...] will do much to ensure better protection for, and better representation of, the interests of populations affected by global politics'. Although institutional arrangements – such as the Global Compact on corporate responsibility, or the newly assigned role of the International Accounting Standards Board (IASB) in accounting standards – can be understood as providing innovative solutions for new problems, they also encompass a more defensive aspect by neutralizing potential critique through co-optation of its most moderate elements. Inclusion and exclusion appear as two faces of the same coin. As Hermet emphasizes, governance may thus well reflect the 'most recent reconfiguration of the imprescriptible aporia of real democracy, one that will always shy away from the sovereign rights of actors excluded from the cooptation at the top' (Hermet, 2005, p. 21). While such a delegation of sovereign rights may have certain advantages in terms of output legitimacy, it also alters the character of governance by raising problems of accountability and input legitimacy.

## Conclusions: The limits of transnational private governance

The central tenet of this chapter is that transnational private governance in the contemporary world faces tough limits. There are limits on definition of each term of the concept and there are normative

limitations on its ability to solve the economic, social and ecological problems of global capitalism as well as deep reservations regarding the lack of democratic legitimacy. Devoting greater attention to such limitations appears to be particularly significant against the backdrop of a literature that tends to portrait the diffusion of power as a major breakthough towards more effective global governance. Against this background, this chapter should contribute to the research agenda that shows how a certain type of international political economy is needed to fully capture how transnational private governance embodies critical junctures of the diffusion of power in international relations.

As far as future conceptual understanding is concerned, we hope that we have been clear enough in showing that transnational private governance is not so transnational, not so private, and not so close to the ideal of 'governance' as described by many observers. While this may leave us in need of a better-suited term for identifying on conceptual grounds future empirical research, further desegregation may also be required to generate new hypotheses and typologies on various forms of transnational private governance.

Our understanding of transnational private governance should in particular pay more importance to its resilience in the context of the current global crisis. It should also further explore the fast growing developments currently underway in the service sector. As services have assumed a crucial importance in our society and are increasingly internationalized, they also rely more on a mix of public–private standards and coordination practices as a result of regulatory reforms (Nölke, 2007; Graz and Niang, 2012). Emerging research thus focuses on transnational private governance in domains such as consultancy, standardization of consumer and social services, as well as on private military companies increasingly entwined in the security agenda.

Finally, this chapter was not thought out as a direct contribution to institutional design. Nevertheless, important lessons could be drawn for engaging the concrete world in which transnational private governance is institutionally embedded. By providing an explicit discussion of its normative implications, it sets out the debate on how some forms of transnational private governance are likely to raise more concerns than others according to distinct criteria for organizing and changing diffusion of power in our contemporary societies.

## Note

1. This chapter is a deeply reworked and abridged version of the introduction to Graz and Nölke (2008).

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# 6

# Bankers Governing the Environment? Private Authority, Power Diffusion and the United Nations Environment Programme Finance Initiative

*Susan Park*

## Introduction

Over the last decade there has been an increasing recognition that non-state actors can be bearers of authority (Clapp, 1998; Cutler, 2003; Cutler et al., 1999; Hall and Biersteker, 2002; Hanson and Salskov-Iversen, 2008; Higgott et al., 2000; Ronit and Schneider, 1999). Conceived of here as legitimized power (Cutler et al., 1999, p. 362; Hall and Biersteker, 2002, p. 3; Hurd, 1999, pp. 381–382), the basis for this authority varies. States delegate authority to Intergovernmental Organizations (IOs) (see Hawkins et al., 2006) but they have also implicitly or explicitly opened spaces for the (re)acquisition of authority by transnational players such as non-governmental organizations (NGOs) and market actors (Aykens, 2002; Cutler, 2003; Lipschutz and Fogel, 2002).[1]

This chapter examines how governance of the global environment by financiers was achieved through the structural diffusion of power in the international political economy (this volume Introduction, p. 13). To explain, the diffusion of authority to financiers comes from the global spread of liberal economic ideas and practices via technological innovation, market pressure and states' willingness to cede control through deregulation (Best, 2005; Helleiner, 1994, p. 81). Although individual corporate power is derived from market share (Fuchs, 2007, p. 172), cumulatively the increase in the number and autonomy of market actors has strengthened their material and structural power in the

international system, with direct implications for global governance or political order (see Introduction).[2] Market actors have thus acquired the authority to create rules across a growing number of industries through establishing private standard setting agencies (Sinclair, 2005).

As discussed in the Introduction (p. 2), the diffusion of power in the international system away from states has not necessarily led to its dispersal. Rather, power has been diffused, but it has not been diluted. The agent may have changed, from states' regulation of the environment to that of corporations (Richardson, 2002). Yet it does not follow that corporations have less power than states to determine environmental standards. Unlike Foucaultian analyses, however, the link between financial regulation (and environmental governance) and states' interests are not explicit (for example Vestergaard's Chapter 7 demonstrates a clear link between international financial institutions and the G7).

This chapter aims to demonstrate that the provision of political order through market governance of the environment is based on impersonal rule (Introduction, p. 4). It identifies the scope of market governance over the environment by tracing the source and extension of authority by private bankers. Compared with the hierarchical rule-making of the state, industry-based standards rely on market actors' underlying expertise for their legitimacy rather than the authority of the rule-maker (Kerwer, 2002, p. 298; Underhill and Zhang, 2008, p. 541). In other words, this is the difference between being 'an' authority compared with being 'in' authority (Aykens, 2002, p. 363; Barnett and Finnemore, 2004, p. 25). The complex technical nature of financial transactions (Tsingou, 2010) has led scholars to view private sector financiers as 'communities of experts' that hold authority (Aykens, 2002, p. 364).

Impersonal rule as a result of these structural changes in the international political economy has direct implications for the normative content of global governance or political order. As with other industries, market actors such as financiers have become the 'authors of policies, of practices, of rules, and of norms. They set agendas, they establish boundaries or limits of action, they certify … they guarantee contracts, and they provide order' (Clapp, 1998; Hall and Biersteker, 2002, p. 4). For the most part this has been in relation to market ordering mechanisms such as exchange rate regimes, credit ratings, banking supervision standards and securities market regulations (Aykens, 2002; Kerwer, 2002; Sinclair, 2005; Tsingou, 2010; Underhill and Zhang, 2008).[3] This chapter explicitly demonstrates the emergence of private authority for financiers in the realm of environmental governance.

In order to demonstrate the emergence of market governance over the environment by financiers, three issues need to be addressed. First, we

need to know how the financial system, which is fundamental to the structure and functioning of the global political economy (Eichengreen, 2008) is connected to environmental degradation. Second, we need to establish what environmental voluntary activities, standards and codes that private sector financiers have signed up to (Peeters, 2003; see Table 6.2), despite the lengthy and often unclear causal chain between financial liberalization and environmental damage. The proliferation of voluntary corporate codes aligns with recent trends towards market governance over the environment in a range of industries (Esty and Winston, 2006; Prakash and Potoski, 2006; Vogel, 2008) but it is worthy of examination to assess the extent of its penetration within the financial sector. Finally, we examine the intersection of market ordering mechanisms and market governance over the environment by identifying how private sector financiers use financial instruments for the provision of public goods such as reducing greenhouse gas emissions to stall global warming (Pinkse and Kolk, 2009). The spectre of climate change and the rise of emissions trading has helped shift the industry towards using financial instruments for environmental purposes (Table 6.1).

This chapter proceeds in four parts. First, it details impersonal rule through the spread of financial liberalization within the global economy and the rise of financial actors' private authority. Second, the scope of market governance of the environment is identified by examining the drivers for voluntary environmental practices for the finance sector. Third, the mechanisms for creating knowledge about the relationship between the finance sector and environmental problems through the United Nations Environment Programme Finance Initiative (UNEP-FI) are examined before locating these practices within broader corporate environmental governance trends. The argument is made that voluntary environmental behaviour among financiers remains weak, yet the creation of environmental knowledge by the UNEP-FI extends private financial authority. Arguably, the normative content of these new mechanisms must be assessed in light of ongoing global financial volatility and worsening environmental degradation (UNEP, 2007).

## Financial liberalization and the rise of private authority

Connecting economic growth and its impact on the natural environmental began in earnest in the 1970s with increasing scientific knowledge and a growing environmental movement (Brenton, 1994; Elliot, 1998; Porter and Welsh Brown, 1996). Prior to the 1980s there was no real link made between finance and the environment (Schmidheiny and Zorraquin, 1998) but it was not until the full swing of financial

*Table 6.1* Top 20 banks worldwide FY 2008 by market capitalization and environmental codes, standards and initiatives signed

| Top 20 Banks by Market Cap FY2008 | UNEP-FI | UNGC | EP | CDP | UN PRI | GRI | BCSD* | WBCSD | CERES |
|---|---|---|---|---|---|---|---|---|---|
| Industrial & Commercial Bank of China | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| HSBC | ✓ | ✗ | ✓ | ✓ | ✓ | ✗ | ✓ | ✗ | ✗ |
| China Construction Bank | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ |
| Bank of America | ✓ | ✗ | ✓ | ✓ | ✗ | ✗ | ✗ | ✗ | ✓ |
| Bank of China | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| JP Morgan Chase | ✓ | ✗ | ✓ | ✓ | ✓ | ✗ | ✓ | ✗ | ✗ |
| Banco Santander | ✓ | ✗ | ✗ | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Citigroup | ✓ | ✗ | ✓ | ✗ | ✗ | ✗ | ✓ | ✗ | ✓ |
| Wells Fargo | ✗ | ✗ | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Mitsubishi UF J Financial | ✓ | ✗ | ✗ | ✓ | ✓ | ✗ | ✓ | ✗ | ✗ |
| BNP Paribas | ✓ | ✓ | ✓ | ✓ | ✓ | ✗ | ✗ | ✗ | ✗ |
| Intesa Sanpaolo | ✓ | ✓ | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| UniCredit | ✓ | ✓ | ✗ | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ |
| BBV Argentaria | ✓ | ✗ | ✓ | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Sberbank of Russia | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ |
| Royal Bank of Scotland | ✗ | ✓ | ✓ | ✗ | ✓ | ✗ | ✗ | ✗ | ✗ |
| Goldman Sachs | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ | ✗ | ✗ | ✗ |
| China Merchants Bank | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Bank of Communications | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| UBS | ✓ | ✗ | ✗ | ✓ | ✗ | ✗ | ✓ | ✗ | ✗ |
| Total | 12 | 4 | 9 | 10 | 6 | 0 | 7 | 0 | 2 |

References: Bernard et al., 2009. The *Financial Times* accumulated data from a range of sources.[4] Market capitalization is defined as 'the value of a company obtained by multiplying the number of its issued ordinary shares by their market price' (Law and Smullen, 2008). Which environmental governance mechanisms the banks have signed has been collected from the various initiatives websites and the banks' publicly available information as of September–November 2009. *The International Chamber of Commerce data is incomplete and does not examine whether members adopt the Business Charter for Sustainable Development (BCSD).

liberalization in the 1990s that finance became a significant source of action on behalf of NGOs seeking greater environmental protection; investors demanded financial returns which were not environmentally and socially harmful; and financiers tried to find lucrative alternatives to pre-empt environmental legislation. This reflected the global shift towards viewing capital mobility as a driver for economic growth (Chwieroth, 2010; Moschella and Leiteritz, 2010). This section details the shift towards greater financial liberalization and private financier authority before examining the links to environmental degradation in the following section.

The shift away from the embedded liberalism of the post-Second World War order was replaced with a 'competitive liberalism' (McNamara, 1998). Based on an adherence to neo-classical economic ideas, the move was a response to the collapse of the Bretton Woods system of fixed exchange rates in 1971 and the tumult of the 1970s oil shocks, rising inflation and recession.[5] Within the 'new era of flexible exchange rates', foreign currencies, as well as stocks and bonds began to be traded freely (Pauly, 2002, p. 80).[6] Advanced industrialized states began to experiment with financial sector reform including the removal of direct capital controls (Abdelal, 2007, p. 3), the removal of taxes on the movement of capital, and the deregulation of financial activity within national finance markets. This extended beyond industrialized states as 'lightly regulated off-shore financial markets' expanded (Pauly, 1995, p. 369).

Within this framework, a consensus began to emerge around the self-regulation of finance among the private sector and industrialized states (Abdelal, 2007; Underhill, 1997, p. 18). This was increasingly reflected as a new orthodoxy within both the Organization for Economic Cooperation and Development (OECD) and the International Monetary Fund (IMF) (see Chwieroth, 2010; Moschella and Leiteritz, 2010; Pauly, 2002). Financial liberalization increasingly spread to developing countries in the 1980s and 1990s and both long- and short-term capital flows across borders expanded exponentially. The result was the 'integration of many once-national capital markets across political and regulatory boundaries' (Underhill, 1997, p. 1). Unfettered in this way, private finance returned as a major force in international political economy.

Rapidly accelerating in the 1990s, capital mobility was furthered by faster and more efficient high speed telecommunications and technology (Andrews, 1994, p. 198; Best, 2005), which contributed to a process of deterritorialization – through the use of tax havens, off shore financing and increasingly complex virtual financing arrangements.

New financial instruments such as hedge funds, securities and derivatives further rendered financial intermediation increasingly specialized and complex (Andrews, 1994, p. 198; Best, 2005).[7] The cumulative effects of states' decisions to liberalize financial markets and the new form and content of capital mobility fundamentally challenged traditional conceptions of state sovereignty, such that scholars began to debate the power of the state to resist market pressures (Strange, 1996; Weiss, 1998). This created opportunities for accelerated economic growth and development; it also increased the potential for economic and political destablization (Pauly, 2002, p. 78).

Attendant to these processes was the rise of new economic actors and the restructuring of financial markets, both of which contributed to diffusing power to, and increasing the authority of, the private sector. First, increasing capital mobility revitalized economic actors such as individual and institutional investors, shareholders, bankers and insurers, while creating new ones including hedge, equity and pension fund managers, brokers and advisors (Sinclair, 2005). This significantly expanded the number of actors engaged in financial transactions, creating greater complexity within financial markets precisely when states were moving towards less oversight of the finance industry (Eichengreen, 2008; Helleiner, 1994). Private financial authority increased such that market actors (such as credit rating agencies) began not only to rate market actors but also sovereign states (Sinclair, 2005). Private financial power increased such that decisions made by these actors could rapidly affect states' fortunes and stability. For example, in a financially liberal and increasingly global political economy, destabilizing short-term financial speculation by investors could not be easily separated from legitimate risk taking (Pauly, 2002, p. 79; Strange, 1996).

Second, in the late 1980s a process variously described as 'disintermediation' (Porter, 1999, p. 154) or 'desegmentation' (Underhill, 1997, p. 20) took place, where financial intermediaries such as banks, insurers and corporations active in the securities market began to blur.[8] Accelerated by the international shift towards deregulation and larger waves of mergers and acquisitions (Buch and Delong, 2004, p. 2082; Fuchs, 2007, p. 51; Valdez, 2000, p. 38), many private sector banks not only increased their international presence to operate across integrated national financial markets but also acquired operations in a range of financial services including commercial banking, insurance and securities. According to Erturk and Solari:

> [b]anks have reinvented themselves in these high income economies, so that they increasingly depend on new activity, indexed generally

> by the rise of fee income. Thus, retail banks increasingly sell financial services products to households and thereby sustain consumption (not production), while investment banks recently have shifted massively into proprietary or own-account trading as well as continuing to facilitate mergers and acquisitions (M&A). In our view, the drive into these new activities intensifies a variety of business model contradictions that are a source of internal tension for individual banks and have uncertain medium-term consequences for the organization of the industry.
>
> (2007, p. 370)

A majority of the largest financial actors, private banks, now cross traditional categories such as commercial, merchant/investment, savings, mortgages, or cooperative banks.[9] Their categorization may depend on the predominant type of work they do which influences how they are nationally regulated and what their interests are, but the latter may also depend on each bank's decision-making and operational structures (and how this affects the commercial, insurance and securities components).[10] While the finance industry is comprised of more than just the big banks, as detailed below, private financial authority in the UNEP-FI is dominated by the private banks and radiates out to other financial actors. As a result, while the finance industry is diverse, the major players have private authority to shape governance mechanisms such as the UNEP-FI, which shapes the normative content of how environmental governance should be undertaken.

The increasing extensity and intensity of financial activity by an array of market actors has increasingly enabled private financier authority, particularly as mentioned, for the major players (Tsingou, 2010). Scholars argue that the finance industry has become unduly resistant to international law (Cutler, 2003; Underhill, 1997). As with other areas of international political economy, this led to the 'growing corporate legal preferences for delocalized merchant customs and "soft law" over binding legislation and "hard law".' As a result, commercial practices and law became disembedded from the public sphere and re-embeded 'in the "private" sphere, free from democratic social control' (Cutler, 2003, p. 13; Underhill and Zhang, 2008).

Although the focus for this chapter is on private financiers' authority and their role in environmental governance, the authority of the finance industry in creating market ordering mechanisms is mirrored in other private sector industries: in production sectors such as agricultural biotechnology, dye stuff production, maritime transport, mineral markets and pharmaceuticals (Clapp, 1998, pp. 298–299; Cutler et al.,

1999; Falkner, 2008) and in service industries such as accounting, information technology and online commerce (Falkner, 2008; Nolke, 2005; Ronit and Schneider, 1999).

As with other industries, the increasingly global nature of financial markets has lead to re-regulation at the international level to provide market order. Precisely because of financial actors' expertise, the esoteric nature of financial practices, and states' ideological adherence to 'light touch regulation' – particularly advanced by the UK and the USA – private financier interests have driven much of the global financial governance arrangements. State responses to financial liberalization have therefore been to allow 'market-oriented approaches to regulation, supervision and corporate risk management, where private firms are responsible for risk management through complex mathematical models implemented under the approval of supervisory agencies' (Underhill and Zhang, 2008, p. 541).

The shift to credit rating agencies to evaluate market actors is a case in point. As Sinclair (2005) has documented, and as the fall-out of the 2007–2008 financial crisis highlights, private sector credit rating agencies have the authority to rate financial actors credit soundness despite their reliance on the very same actors to buy their services. That credit rating agencies did not foresee the systemic nature of the 2007 subprime housing crisis in the USA, which led to the worst recession since the Great Depression, points to their role in the system. It also points to the lack of national regulation through the US Securities and Exchange Commission and oversight from the Federal Reserve Bank. Such failures enabled the crisis to spread rapidly throughout the finance sector and into the real economy through the bundling of loans with toxic subprime debts which were lent to financial institutions in the USA and overseas (on the causes of the 2007–2008 recession and its impact on financial governance, see Chwieroth, 2010, Epilogue).

As scholars have shown, private interests have been overwhelmingly represented in forming market ordering mechanisms beyond credit rating agencies such as global banking supervision and securities market regulation. For example, the Basel II Accords in 2004 on banking supervision were heavily influenced by a transnational policy community comprised of private sector financiers (Tsingou, 2010, pp. 5–6). The accords are agreements undertaken by the Basel Committee on Banking Supervision under the Bank of International Settlements (BIS) whose mandate is to 'promote the co-operation of central banks and to provide additional facilities for international financial operations …'. The BIS is a discussion forum that enables information sharing among Central

Bank Governors while disseminating financial data to both private and intergovernmental financial actors (BIS statute cited in Seabrooke, 2006, p. 141).

Private authority was evident in the Basel II process when private financiers moved from influencing the accord through private organizations and associations such as the Group of 30 (G30) and the Institute of International Finance to actually writing 'the policy script'. As Tsingou argues, this went beyond regulatory capture as individuals moved between public and private positions within the transnational policy community while creating shared ideas on financial standards (Tsingou, 2010, pp. 5, 7–10). Such governance 'transform[s] the notion of the public interest' because it is 'increasingly aligned with the preferences of powerful market players', which further reinforces private sector structural power (Underhill and Zhang, 2008, p. 536).

Moreover, Underhill and Zhang demonstrate how private sector interests are served by international securities market regulations, as a result of the 'traditionally close relationships between bankers and regulators' (2008, p. 544). The International Organization of Securities Commissions (IOSCO) is comprised of national securities regulators. However, because most national security regulators delegate to self regulatory organizations, and because the organization has associate members that are market actors, IOSCO considers itself to be non-governmental (Underhill and Zhang, 2008, p. 548). This transnational policy community is representative of an 'elite group [that] works out the management of its own vital interests without wider public involvement' (Underhill and Zhang, 2008, p. 549). Empirical research has therefore documented the structural diffusion of power in the international political economy, such that private financier authority is the basis for governance of financial markets: credit rating systems, banking supervision and securities regulation. Exactly how and why private financier authority has gone beyond market ordering mechanisms to enter the realm of global environmental governance is examined next.

## Greening the bankers: Drivers of market governance over the environment

Having documented the rise of financial liberalization and the emergence of private financial authority, this section examines the rise and scope of private financiers' involvement in market governance over the environment. In the 1990s, NGOs, individuals and institutional investors increasingly made connections between financial

liberalization and negative environmental impacts, which in turn lead to a plethora of voluntary environmental codes, standards and commitments for financiers (see Table 6.2). This draws our attention to the ways in which market governance for the environment developed in lock-step with financial liberalization. The UNEP-FI is further evidence of new mechanisms created as a result of structural changes to the international political economy through 'impersonal rule' (see Introduction). Specifically, the UNEP-FI creates industry knowledge about governing the environment, which arguably extends financiers' private authority by broadening what constitutes market ordering mechanisms: by creating new financial markets, instruments and goods out of the natural environment, private authority is thus extended to govern these mechanisms. In order to make this case, the process linking the finance sector and environmental degradation must be made explicit.

Debates over the environmental impact of capital mobility resulting from financial liberalization can be divided into three categories: the impact of portfolio investment, the impact of direct foreign investment (FDI), and the impact of bilateral and multilateral regulatory structures underpinning international investment. First, portfolio investment may contribute to the geographical separation of investment decisions from the point of impact, thus separating local (environmental) concerns from investor decisions. This may be reinforced by short term investment decisions that overlook or discount long-term environmental risks (Araya, 2005, p. 48). Moreover, investors may not adequately realize how investment decisions impact on the natural environment (Schmidheiny and Zorraquin, 1998).

In terms of FDI, arguments have been made that investors are attracted to low income and poorly regulated states that create 'pressure for industrial relocation' especially in environmentally degrading industries leading to 'pollution havens'. Further, competition for FDI among developing states is seen to lead to a 'race to the bottom' of negligible or unenforceable regulations that allow environmental degradation. Competing versions of the thesis argue that states will be 'stuck at the bottom' through a reinforcing cycle of investment based on past practices, although advanced states may also be engaged in a 'race to the top' to take advantage of new environmental technologies in highly environmentally regulated states (for a review, see Araya, 2005, p. 49; Porter, 1999).[11]

Finally, some multilateral trade treaties do incorporate environmental protection measures such as Mercosur and the North American Free

Trade Agreement (NAFTA) based on the connections between trade, investment and environmental degradation just outlined. Experience with the latter influenced the formation of 'new generation' bilateral investment treaties in the USA and Canada (Miles, 2009, pp. 20–24). Yet these new-generation treaties are vaguely worded and unenforceable in their support of 'sustainable development', while the majority of bilateral investment treaties supporting capital mobility still do not incorporate environmental protection measures in any way. The result is one of reinforcing a business as usual approach to financial decision-making. At present therefore, the institutional structures supporting investment do not adequately take environmental considerations into account.

As financial markets opened and deepened throughout the 1980s and 1990s, environmental conditions across the board continued to decline (UNEP, 2007). The shift from national financial regulations occurred simultaneously with the movement away from state-based environmental regulations, with the latter increasingly being seen as a blunt instrument for achieving positive environmental outcomes (Richardson, 2002, Chapter 2).[12] These trends did not go unnoticed. NGOs began to demand improved corporate environmental and social performance. States in turn accepted corporate self-regulation over mitigating their environmental impact (on the corporate turn towards Corporate Social Responsibility (CSR), see Brown et al., 2010; Kinderman, 2009).

Before examining financiers' entry into environment governance, the three driving factors motivating private financiers are recounted. First, NGOs began to undertake campaigns against both private financiers and IOs that supported financial liberalization. Environmentalists challenged corporate behaviour through campaigns, often identifying harmful environmental behaviour with the most visible corporation with the largest market share. Unlike most of the industries targeted such as chemicals, textiles and footwear, forestry, oil, gas and mining, the link between investment decisions and environmental degradation is once removed. In other words the 'cause' of the environmental problem is the actor directly affecting the environment, usually companies involved in the extraction, production, transportation and waste disposal of goods within an increasingly global supply chain.

Yet environmentalists attempted to change private financier behaviour precisely because of their increasing private authority in the international system. In short, shaping what financiers thought was appropriate to invest in would restrict business' access to capital for extraction, production, transportation and waste-disposal operations.

Cutting off corporations' access to capital would therefore limit environmental degradation. Furthermore, environmentalists hoped that their campaigns would also directly impact on both the financiers' and the company's market value, leading in turn to a re-examination of their corporate practices (Richardson, 2002, Chapter 4).

Environmentalists increasingly began to 'follow the money' in terms of targeting private banks through campaigns to prevent the financing of environmentally harmful projects (e.g., financing the building of pulp and paper mills). They publicized how the loans from private financiers to other firms may be used, through online and traditional media as well as publicity stunts, shaming and persuasion. Large scale campaigns against banks like Citigroup were seen to be instrumental in the decision to establish environmental implementation procedures for project financiers, such as the Equator Principles (Wright and Rwabizambuga, 2006).

Environmentalists also engaged in shareholder activism, purchasing shares in publicly listed companies in order to raise environmental concerns at shareholder meetings. This fed into the broader shift towards investor activism and investor screening for environmentally and socially damaging corporate behaviour, although this tends to be single issue driven, is not comprehensive, and is generally based on excluding negative practices rather than requiring positive ones (Macleod, 2009; Simpson, 1991).

Second, environmental opposition to corporate activities was reinforced by campaigns against IOs supporting financial liberalization. Protesters rejected attempts by the OECD to further financial liberalization by successfully opposing the creation of a Multilateral Agreement on Investment that would consolidate the rights of investors and protect capital flows over social and environmental concerns (Ranald and Goodman, 2000). The IMF came under attack for imposing conditionalities and structural adjustment policies on developing countries. Such conditions, it was argued, accelerated or compounded the restructuring of economies (with resultant distributional costs to societies) and further exploited the natural environment through opening markets and providing investment for rapid agricultural production for export, industrialization, and trade in natural resources – all with negative environmental consequences.

Meanwhile, environmentalists were shaping the flows of *public* finance through multilateral development banks, such as the World Bank Group, to prevent environmental degradation, and campaigning against the environmental devastation resulting from development

projects (Park, 2010). When bilateral export credit agencies (ECAs) took up the slack of investment funding for project financing from bilateral and multilateral aid agencies in the 1990s, environmentalists pushed for environmental standards for ECAs within the OECD.[13]

Bar the campaigns outlined above, there was little leverage to shape *private* finance through IOs: the United Nations Conference on Trade and Development (UNCTAD) had reoriented itself to promote rather than oppose the spread of FDI, while the OECD had limited Guidelines for Multinational Enterprises, in order to further economic growth and development. The UN entered the debate through launching the Global Compact in 2000, bringing together ten principles that states, labour, civil society and business could voluntarily adopt (Kell, 2005; Ruggie, 2001). Despite the 2900 corporate members of the Global Compact, there is little evidence that it, or any other IO guideline, is having a significant effect on corporate behaviour. As a result, the finance sector remained seemingly inured to environmentalists' demands for regulating their environmental impact.

To be sure, environmental campaigns are not the only reason for the financiers to begin to cooperate at the international level on how to address environmental issues. A third driving factor is that industries often aim to acquire self-regulation as a means of pre-empting national and/or international regulation. In states with a significant number of large private investment banks, national legislation does play a role. Although legislation linking banks to environmental degradation has existed in the USA since the 1970s, the shift to 'green' the industry emerged internationally in the 1990s. Recent fears of further environmental legislation in the USA have reinvigorated voluntary action by financiers (Wright, 2006).

More recently, in states such as the UK, environmental reporting requirements are now included in legislation such as the 2005 Pensions Act and the 2006 Companies Act (Miles, 2009, pp. 66–67). Similar legislation has been enacted in Australia, Denmark, Germany, Italy, the Netherlands and Sweden (Miles, 2009, p. 67; Richardson, 2002, pp. 304–306; UK, 2005, p. 15). The industry has responded to improved investor knowledge and preferences for socially and environmental responsible financial services. The broader shift towards CSR has provided the vehicle for the finance industry to take on environmental issues in an otherwise socially conservative industry.[14] Socially responsible investment (SRI) and ethical funds have become standard products in the finance market with most if not all major banks and funds offering these services.

In sum, three factors have led to the finance industry's engagement with environmental governance: NGO campaigns against banks and IOs that support financial liberalization and the attendant reputational risk this creates for banks; to prevent national and international regulation; and an increase in investor demand for ethical financial services and products. A fourth important driving factor is raised next: the minimal cost and non-enforceability of the environmental standards (Esty and Winston, 2006; Levy et al., 2009; Prakash and Potoski, 2006). The next section identifies the scope of market governance over the environment by tracing the emergence of the UNEP-FI.

## The UNEP-FI and private authority: Creating new market mechanisms

Private sector financiers have increasingly been involved in numerous environmental governance arrangements, including issue or country specific codes, indexes, projects and organizations (see Table 6.2 above). The UNEP-FI and the UN Principles for Responsible Investment (UN PRI) set themselves apart from NGO, Government and IO created principles (discussed below), as they were instigated by UNEP and banks.

The UNEP-FI is comprised of two principles: one for insurers and one for financiers. Discussions about the creation of the UNEP-FI began in 1991 in the lead up to the United Nations Conference on Environment and Development. The UNEP Banking Initiative was formed between UNEP and a small cohort of private banks lead by Deutsche Bank, HSBC Holdings, NatWest, Royal Bank of Canada and Westpac (UNEP-FI, 2006b). In May 1992 they signed the UNEP 'Statement by Banks on the Environment and Sustainable Development'. This voluntary initiative aimed to mainstream environmental concerns throughout the banking industry through dialogue and discussion with development agencies. In 1997 the Banking Initiative was redrafted to appeal more broadly to the finance industry, which they named the Financial Institutions Initiative (FII).

A separate initiative was operating in parallel for the insurance industry, called the UNEP Insurance Industry Initiative (III). In 1995, the major insurers, reinsurers and pension funds from Europe, some from Asia and a few from North America signed the UNEP 'Statement of Environmental Commitment by the Insurance Industry'. The main environmental concerns listed in the insurance initiative include climate change, the efficient use of resources and pollution reduction. The statement recognized the Precautionary Principle and notes that 'the

existing skills and techniques of our industry in understanding uncertainty, identifying and quantifying risk, and responding to risk, are core strengths in managing environmental problems' (UNEP-FI, 2006c).

These two initiatives were brought together in 1999 once the overlaps between the industries were recognized. The conjoining of the initiatives formally in 2003 brought a greater number of signatories with similar interests together, under a single Finance Initiative (UNEP-FI, 2006b). Since the merger there have been global roundtables including Tokyo (2004), New York (2005), Melbourne (2007), Cape Town (2009) and Washington (2011) as well as smaller regional roundtables.[15] In 2005, the UN PRI was established under the UNEP-FI and the Global Compact. It has since grown very rapidly very recently with 643 signatories comprised of asset owners, investment managers and professional service partners.[16] Owing to its institutional emergence, structure and aims, it is considered here as a continuation of the UNEP-FI model.[17]

Despite being a partnership between UNEP and private financiers, the UNEP-FI is an example of private financier authority. It is organized by a steering committee that has only one UNEP representative and 13 signatory representatives (financiers) that are elected annually. The UNEP-FI is driven and funded by private financiers although it is housed within the UNEP's Division of Technology, Industry and Economics. UNEP is a programme of the UN managed by a Governing Council of 58 member states, which reports to the General Assembly through the Economic and Social Council. UNEP's role is to be a catalyst, advocate, educator and facilitator in promoting sustainable development. It aims to encourage 'new partnerships and mind-sets within civil society and the private sector', enabling it to enter into agreement with financiers (UNEP, 2006a). Although hosted by the UNEP-FI, the activities are undertaken by and for the private sector. Presumably reliant on the scientific knowledge of UNEP, the Finance Initiative is open to input from civil society at its global roundtables although knowledge of finance is fundamental to be able to engage with the process.[18] The technical and esoteric nature of the finance industry is therefore replicated in its environmental governance mechanism.

As with most voluntary principles, the 'UNEP FI Statements are aspirational, voluntary declarations of intent signed by financial and insurance institutions. The Statements are unilateral non-binding commitments and thus non-contractual in nature' (UNEP-FI, 2006a). As such, the UNEP-FI has been described as a 'Principled Code' that is lacking in 'specific implementation provisions'. This compares with the more rigorous 'commitment code' of the Equator Principles (discussed

below) which offer 'specific guidance on intended actions or behaviours' (Wright, 2009, pp. 5–6). Yet brushing the UNEP-FI off by assessing its merits based on formal legal codes and voluntary standards undermines the role that it plays in generating knowledge for the industry and providing a means of understanding how environmental problems can be understood (and therefore governed) through financial instruments.

The signatory representatives are elected in groups around which they structure their activities, namely working groups and regional task forces. Core working groups have been established on climate change (encompassing carbon finance, renewable energy and policy regulation); property; insurance; investment (covering asset management, responsible investment and emerging markets); sustainable management and reporting (now linked to the Global Reporting Initiative (GRI)). There are also non-core working groups for biodiversity; finance and conflict; human rights and finance; and water. Further working groups may be added by the signatories. Six regional task force groups exist for Africa, the Asia Pacific, Central and Eastern Europe, Latin America, North America and Western Europe. Decisions are made by its members. As its members are financiers, the UNEP-FI is best described as a finance industry driven mechanism rather than a public–private partnership.

The UNEP-FI undertakes research, derives findings, and makes recommendations on the activities of the finance industry in relation to each of its work streams. It may therefore be considered a knowledge generator that seeks to ascertain the activities of its members as a means of deriving best sustainable practices. It therefore provides important information on what members are doing. For example, recent research in the Africa stream includes: surveys of the microfinance institutions in Africa (UNEP-FI, 2008) and an examination of South African and Nigerian banks' credit risk policies in relation to environmental and social issues (UNEP-FI, 2007). Some work streams are just getting started such as the Central and Eastern European regional group, but others such as the North American task force are well developed, as befits a region with a strong finance industry. There has also been a great deal of research being done on the role of the finance industry in relation to climate change, which informs its lobbying efforts for further international agreements on climate change.[19]

Not only does the organization undertake research and present findings freely available online, but it also has a range of e-learning training tools for the finance industry about how to incorporate climate change, eco-efficiency, environmental and social risk and how to insure renewable energy, into everyday decision-making. It also provides a database

of best practice.[20] Understood as a means of producing knowledge for the industry by the industry, the private authority of UNEP-FI is based on the expertise of financiers and is legitimized by its affiliation with the UNEP.

The UNEP-FI is important because it is the broadest of the finance principles covering all financiers (and insurers). As of November 2009 it had 183 signatories. Owing to financial disintermediation, the UNEP-FI model, like the Carbon Disclosure Project (CDP), attracts signatories covering investors, insurers, funds and banks. In terms of size, both the CDP (475 signatories) and the UN PRI (643 signatories) have more members than the UNEP-FI, although the former is a data collection organization, akin to the GRI, which more specifically meets the needs of financial institutions for disclosing carbon emissions.

The UNEP-FI and the UN PRI tend to dominate the governance arrangements for sustainable finance, except for carbon disclosure which is being propelled by the urgency to address climate change through carbon trading. The UN PRI emerged from the combined efforts of the UNEP-FI and the UN Global Compact. If we view the UN PRI as sharing the same practices, though more specifically for institutional investors (discussed below), then financiers have been more likely to sign up to the UN PRI and the UNEP-FI than most other standards, codes and initiatives. Moreover, examining the top 20 banks by market capitalization for the financial year 2008 shows that the top banks globally have signed up to the UNEP-FI over any other standard, including the UN PRI (see Table 6.1). This points to the finance industry's interest in engaging with environmental issues through practice rather than meeting externally derived standards, while the low entry cost (discussed below) makes these governance mechanisms worth joining.

Of the 183 UNEP-FI signatories, complete information can be found for 60 per cent (or 110 financiers) and these are examined here.[21] UNEP-FI financial institutions have signed up to 31 different codes, standards and initiatives (see Table 6.2). As detailed in the chart, in terms of other codes, 37 per cent of UNEP-FI signatories are members of the UN Global Compact and 30 per cent are members of the Equator Principles. The percentage of signatories then drops approximately 10 per cent, with fewer members signing up to the Carbon Disclosure Project (22.7%), the UN PRI (21%), and the ISO 14001 environmental management series (20%). Notably, only 16 per cent are members of the GRI, which is considered to be one of the most successful of all of the corporate environmental codes (Levy et al., 2009); membership may or may not change now that the GRI has a financial supplement

*Table 6.2* Environmental codes, standards and organizations signed by UNEP-FI signatories

| |
|---|
| Actioncarbone.org (Act.) |
| Association for Sustainable and Responsible Investment in Asia (ASrIA) |
| Business Charter for Sustainable Development by the International Chamber of Commerce (BCSD) |
| Business Environmental Leadership Council (BELC) |
| Business in the Community (BiC) |
| Carbon Disclosure Project (CDP) |
| Carbon Markets and Investment Association (CMIA) |
| CBI Climate Change Taskforce (CBI-CCT) |
| ClimateWise (CW) |
| Coalition for Environmentally Responsible Economies (CERES) |
| Corporate Responsibility Group (UK) (CRGUK) |
| Dow Jones Sustainability Index (DJSI) |
| Environmental Bankers Association (EBA) |
| Equator Principles (EP) |
| Forge Group (FG) |
| FTSE4Good Index (FTSE4GI) |
| Global Reporting Initiative (GRI) |
| Institut du mécénat social – Entreprendre pour la Cité (IMS) |
| Institute of Social and Ethical Accountability (ISEA) |
| International Business Leaders Forum (IBLF) |
| Investor Network on Climate Risk (INCR) |
| ISO 14001 |
| Latin American Sustainable Finance Forum (LASFF) |
| London Accord (LA) |
| Oxfam 365 Alliance (Ox365A) |
| Social Investment Forum (Europe, UK, US divisions) (SIF) |
| Social Investment Organization (SIO) |
| The Carbon Principles (CP) |
| UN Global Compact (UNGC) |
| UN PRI (UNPRI) |
| World Business Council of Sustainable Development (WBCSD) |

that it created with the UNEP-FI, though signing up to both to get such information and advice may be considered unnecessary.

In terms of indexes to indicate environmental and social responsibility, only 7 per cent of UNEP-FI signatories have been included in the FTSE4Good Index, compared with 4.5 per cent for the Dow Jones Sustainability Index. The remaining codes, standards and initiatives attract fewer than 5 per cent of the UNEP-FI signatories (see Figure 6.1). Approximately 80 per cent of UNEP-FI signatories sign between two and four environmental codes, with far fewer signing five or more (see Figure 6.2).[22]

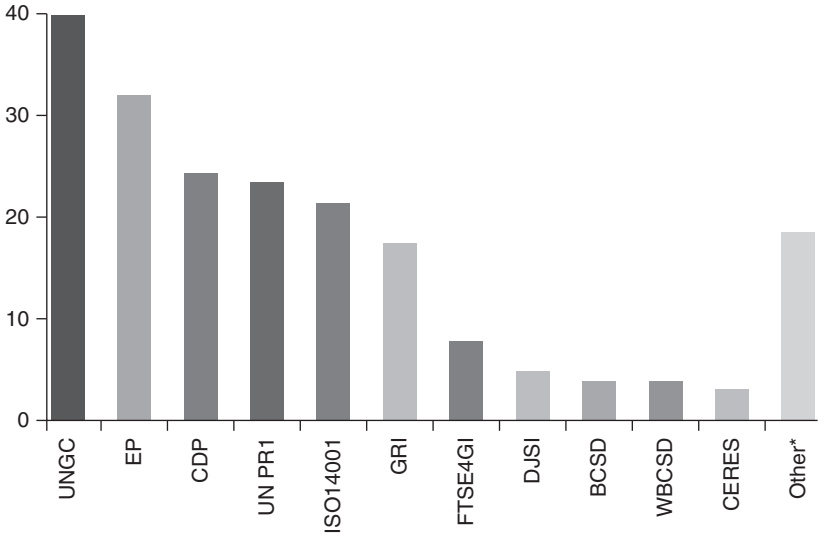


*Figure 6.1* Number of UNEP-FI signatories that have signed other initiatives
*Note*: Figure 6.1 Other* indicates the remaining codes, standards and initiatives listed in Table 6.2 but where signatories have tended to sign only one of these codes each

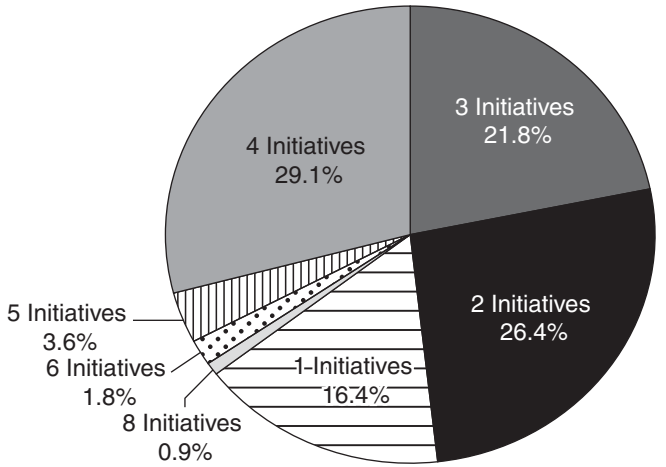


*Figure 6.2* Number of environment initiatives that UNEP-FI signatories have joined

As a result the UNEP-FI plays an important role for the finance industry in creating new knowledge and mechanisms for environmental governance. Specific industry codes do exist for the finance industry but these are government or NGO driven not industry directed: the

Collevecchio Declaration, the London Principles, the Equator Principles, the UNEP-FI and the UN PRI. The Collevecchio Declaration on Financial Institutions and Sustainability is an NGO-led initiative with six principles and 102 signatories, but no private sector financiers and only one institutional investor.[23] The London Principles are seven principles that the UK government developed based on the best use of financial instruments for sustainable development in three areas: asset management, new financing and risk management (UK, 2002, pp. 6–7). Launched at the World Summit on Sustainable Development in 2002, the London Principles are not a formal code with obligations and monitoring, although 18 companies have signed up. The London Principles were created for 'shaping debate, sharing best practice, enabling innovation and providing financiers and policy-makers with an analytical context to assess the contribution of financial products and services to sustainable development' (UK, 2005, p. 10). In short, the principles are a reflection of the industry's innovation and potential as understood by the UK government.

In comparison, the Equator Principles provide detailed voluntary procedures for project financiers to guide their operations, which were adapted from the International Finance Corporation's environmental and social safeguards by the finance industry (Park, 2010, Chapter 4). There are ten principles that cover how financial institutions review and assess project sponsors (the company undertaking the project) in their due diligence, implementation, stakeholder engagement and information disclosure regarding the projects potential environmental and social impacts. The Equator Principles are considered to be 'harder' in terms of establishing concrete standards to which banks are to be held – and are more specific in their requirements regarding environmental management system required of the project sponsors (Wright and Rwabizambuga, 2006). In reality however, there has been little in the way of assessing whether banks actually meet these standards. Scholars note that the Equator Banks disclose little information on their practices (Scholtens and Dam, 2007, p. 1322), while industry surveys do not shed much light (Watchman, 2005a, 2005b). With 67 current signatories, the Equator Principles are limited to project finance although they do cover 80 per cent of that form of financing (49 per cent of Equator Banks have signed the UNEP-FI).[24]

Private banks do also sign up to other more generally known voluntary environmental standards. These are not industry specific: the UN Global Compact; the International Chamber of Commerce's (ICC) Business Charter for Sustainable Development; the World Sustainable Development Business Council; the Coalition for Environmentally

Responsible Economies (CERES); the Global Sullivan Principles; the ISO 14001 environmental management series; the GRI (which is now an official collaborator with UNEP); and the Carbon Disclosure Project (CDP).

Financial institutions have signed up to these general codes. For example, 37 financiers have signed up to the GRI (with 48.6 per cent of those also signing the UNEP-FI). There are also environmentally targeted practices such as the CDP. 475 'Signatory Investors' comprising banks, pension funds, and insurance companies have signed onto the CDP (although only 5.8 per cent of these have signed onto the UNEP-FI).[25] The GRI and the CDP provide means of devising metrics for reporting on environmental impact and carbon emissions respectively. Arguably however there is little point of comparison between these externally driven environmental standards and the creation of new market mechanisms for environmental governance by the finance industry, as there are increasing connections and overlaps between them.

In late 2008 the UNEP-FI released banking specific codes to be added to the GRI as a supplement for the finance industry. This creates specific measures that UNEP-FI signatories can implement to demonstrate their environmental intent. Although the GRI was formed by CERES in 1997, it is in fact an 'official collaborating centre' with UNEP and it also works with the UN Global Compact (Peeters, 2003, p. 213). The UNEP-FI also makes clear that its signatories should agree to the recommendations that it makes to the World Business Council for Sustainable Development.[26] Connections with the UN Global Compact are increasing also. In 2005, the compact and the UNEP-FI established the collaborative network known as the UN PRI. Finally, although the Equator Principles remain distinct, banks that have signed up to these are also members of the UNEP-FI. The UNEP-FI's outreach activities may be reinforcing private authority in environmental governance by demonstrating the centrality of the mechanism for the industry. The normative implications of this are discussed next.

## The UNEP-FI: Reinforcing market governance over the environment

The growth of the UNEP-FI over time and the spawning of the UN PRI indicate that private financiers view these mechanisms as worth joining. Precisely because it is by and for the industry, the mechanism has the capacity to shape industry understandings of environmental governance. Continued support from UNEP, and the increasing connections with other codes and standards outlined above, also suggests

that it remains a viable means for the industry to address environmental issues. The UNEP-FI reinforces broader trends toward industry or product driven market governance over the environment (Vogel, 2008, p. 269). Some scholars delineate environmental governance mechanisms into categories based on their structure, although these do not adequately capture the UNEP-FI's role as creating new mechanisms for environmental governance.

For example, Gleckman (2004) identities four categories of corporate governance: voluntary codes and standards, self-defined implementation standards, self-financed certification standards, and elective public reporting. First, both general and industry specific voluntary codes of conduct exist such as the ICC Business Charter for Sustainable Development and the CERES Principles. Second, self-defined implementation standards include ISO 14001 series on environmental management, the GRI and the Equator Principles. Third, self-financed certification standards include certificates for forest and marine products, as well as cocoa, coffee and flowers (Cashore et al., 2004; Lipschutz and Fogel, 2002; Vogel, 2008). Finally, elective public reporting is often done on a firm by firm basis, and varies considerably in terms of what information is provided. Often publicized as CSR, environmental and social governance (ESG) or sustainability reports, these 'post and tell' methods have been criticized as little more than public relations exercises. The UNEP-FI could fit within the category of an industry specific voluntary code of conduct but this does not really tell us very much about how it operates and the benefits it produces for its signatories.

Alternatively, Fuchs (2007, pp. 122–123) views the various types of voluntary business behaviour following five generations of practice: from company codes of conduct to business defined sector codes of conduct, then to business defined international standards, to business and NGO defined sector specific codes and labels and finally to tripartite defined generic social standards. Again, the UNEP-FI could fit within Fuch's category of business defined codes of conduct or even as international standards but this tends to assume that the principles will be considered hard benchmarks for activity rather than guides for business innovation. Further, the UNEP-FI, UN PRI and the Equator Principles are all linked to IOs. They therefore fit equally well within both business defined sector codes and international standards. As a result, neither of these typologies best capture the nature of the initiatives and the governing practices established by the industry.

While Gleckman (2004) and Fuchs (2007) focus on categorizing specific standards, the knowledge creation activities of the UNEP-FI are

overlooked. An alternative would be to view the UNEP-FI as a 'green club' (Prakash and Potoski, 2006). Green clubs are where non-state actors incur private costs to adopt standards as part of its membership in the club, the result of which public goods are created (such as improved environmental quality) as well as private goods (knowledge and practices useable by the individual financial actor) and club benefits (where membership improves members' reputational rating). The strength of the green club is assessed on the strength of its standards and its enforcement. However, there is no barrier to entry and there are no enforcement mechanisms bar ejecting signatories that do not meet the very low membership costs (annual dues, biennial meeting attendance and submitting an annual report). If this is a green club, it is a very weak one.

Although the UNEP-FI does have some minimal requirements for membership, its focus is not to create hard (or even soft) rules through which to assess its members. Rather, it aims to create and share knowledge across a range of environmental problems that are both global in scope (climate change and water for example) and regionally specific. The UNEP-FI does not operate as a standard setting body in the way that the CERES Principles, the Collevecchio Declaration, the Global Compact, the Global Sullivan Principles, the ISO 14001, the GRI or the Equator Principles do. Rather, the UNEP-FI acts as a knowledge generator, creating information for financier actors on how they may be able to engage with environmental problems. Assessed in this way, the UNEP-FI, like the UN Global Compact, the CDP and UN PRI, is an extremely weak club compared to other initiatives with little in the way of requirements expected of signatories.

Perhaps the UNEP-FI might best be understood not in terms of what standards are created (and whether or not they are met) but in terms of the way in which environmental issues are addressed by the private sector and the knowledge it generates. Like Ruggie's (2001) characterization of the UN Global Compact as a 'learning network', the UNEP-FI seeks to 'develop and promote linkages between the environment, sustainability and financial performance'.[27]

Neither the Global Compact nor the UNEP-FI are regulatory bodies with legally binding codes of conduct (Ruggie, 2001, p. 372). Ruggie argues that the Compact is a learning model of sharing best practices through meetings and case studies. This occurs via an inter-organizational network where 'autonomous organizations combine their efforts voluntarily to achieve goals that they cannot reach as effectively or at all on their own'. These networks are 'inherently experimental, not routine and standardized', while the network operates as

a 'shared conceptual system' but where the actors (in this case firms) do all the work, and meet on a needs basis. Sharing a common vision and purpose, such a network 'is a framework for normatively coordinated behavior' that can 'produce a new collective outcome' (Ruggie, 2001, p. 375). Unlike the compact however, which encompasses all private sector actors, the UNEP-FI and the UN PRI's sectoral focus makes them better able to define and refine how the finance sector grapples with its relationship to the natural environment (and encompass more than the CDP).

The UNEP-FI is further distinguishable from the UN Global Compact, in that the compact is a top down disseminator of what is considered best practice for the private sector. In other words, the compact brings together into one domain, environmental, human rights, labour and anti-corruption standards that have emerged within and across the UN (drawing on the Universal Declaration of Human Rights, the Rio Declaration on Environment and Development and the International Labour Organization's Fundamental Principles and Rights at Work, among others).[28] In comparison, the UNEP-FI (and the UN PRI) actively create the means to incorporate environmental issues into financial models and instruments through their own knowledge practices.

The UNEP-FI is not just therefore an expression of private authority but in essence creates new norms within the industry about how to respond to environmental problems by devising new market instruments and practices. Such practices may come to be seen as global industry benchmarks rather than externally derived standards. In this regard, as with Foucaultian analyses, the process of establishing market mechanisms may produce a process of self-disciplining, although it may be difficult to ascertain the extent to which such processes may be visible to those outside the industry (Vestergaard, Chapter 7, p. 12). For example, few UNEP-FI members are de-listed for not meeting the minimum requirements but self-monitoring does not go much beyond this low threshold. Whether its innovations are capable of surviving and thriving amidst global financial volatility, and whether they can arrest ongoing environmental decline, remains to be seen. Irrespective, private sector financiers are now leading efforts in governing the environment in ways unimagined at the beginning of financial liberalization in the 1970s.

## Conclusion

This chapter examined how the process of financial liberalization that began in the post-Bretton Woods era enabled the diffusion of power to

private sector financiers. Accelerated financial liberalization in the 1990s through impersonal rule led to private financier authority over a host of market ordering mechanisms. The scope of market governance of the environment was identified after examining the drivers for voluntary environmental practices for the finance sector. The UNEP-FI is a private sector driven mechanism that generates knowledge for how the financial industry should integrate environmental issues. It is representative of private financier authority, where it is increasingly seen as legitimate within the international system for financiers to engage in environmental governance. This is highlighted by the affiliation with the flagship international institution on the environment, UNEP. It is too soon to tell whether the financier environmental knowledge practices created within the UNEP-FI may help mitigate environmental degradation, although the industry's focus on the ongoing financial crisis means that environmental difficulties may not receive the attention they deserve. Not unexpectedly, the prioritization of financial crises over environmental ones reveals the normative bias inherent in using market governance for the global environment.

## Notes

1. Barnett and Finnemore point to four types of authority: delegated, rational-legal, moral and expert (2004, p. 23). IO authority stems from Weberian conceptions of rational-legal authority of bureaucracy and delegated authority from member states. NGOs are often seen as holding moral authority based on their altruistic principled beliefs (Keck and Sikkink, 1998; Porter and Brown, 1996, p. 51). Market actors have expert authority in their area of operations.
2. Market share is an important basis for private authority particularly in industries with a small number of players which operate globally (Fuchs, 2007, p. 53).
3. Cohen argues that market actors have 'passive' influence rather than authority in forcing states to choose between policy autonomy and exchange rate stability (2008, p. 463).
4. There are numerous criteria with which to assess the world's largest banks: market capitalization is a common metric.
5. Although the rigidity of the Bretton Woods system was apparent much earlier (Best, 2005; Eichengreen, 2008; Underhill, 1997).
6. Pre-2007 the foreign exchange market was turning over $1.9 trillion daily (Seabrooke, 2006, p. 141).
7. For example, pre-financial crisis hedge funds had combined assets of $1.6 trillion, a five-fold increase between 1999 and 2007 (Chwieroth, 2010, p. 145, f/n 21).
8. Disintermediation is the 'elimination of intermediaries, such as brokers and bankers, from transactions between borrowers and lenders or buyers and

sellers in financial markets. Disintermediation has been a consequence of improved technology and deregulation …' (Law and Smullen, 2008).

9. For example, in 2008 the world's largest number-two ranked bank HSBC (see Table 6.1), has 9500 offices in 86 states covering personal, commercial and corporate banking (Bernard et al., 2009). At HSBC corporate banking includes 'global transaction banking, global markets and investment banking, asset management and [project and export] financing', see HSBC online: http://www.hsbcnet.com/investment/corporate-banking. Accessed: 2 April 2009. Large banks also offer personal 'loans, mortgages, pensions, and insurance' as well as savings accounts (Law and Smullen, 2008). As the 2007–2008 financial crisis abates, states are deliberating over limiting banks' scope of financial activities (Dash and Jolly, 2009; Martin and Morgenson, 2009)
10. Banks operating transnationally are all structured and nationally regulated very differently. For example, China's three largest banks by market capitalization in 2008 were all formerly Chinese state-owned banks (Beard 2009); Toral (2008) demonstrates how Spanish banks' international practices stem from how they were privatized in Spain.
11. Environmental degradation from investment decisions are context specific including the scale of economic activity being invested in, the type of technology used in the economic activity, and the composition effects of the industry as a result of global market forces (Araya, 2005, pp. 49, 58).
12. This is despite the emergence of global environmental governance (Park et al., 2008).
13. See www.eca-watch.org/and www.oecd.org
14. Kinderman explicitly makes the connection between the rise of CSR in the 1970s with the end of embedded liberalism (2009, p. 11).
15. Signatories still sign either the statement for financial institutions or for the insurance industry.
16. As of 24 November 2009.
17. See the UN PRI online: http://www.unpri.org/ accessed: 2 November 2009.
18. Fewer than 1 per cent of the UNEP-FI signatories are foundations and fewer than 2 per cent are development banks. See the UNEP-FI online: http://www.unepfi.org/ accessed: 3 November 2009.
19. See UNEP-FI online, www.unepfi.org/index.html accessed: 4 November 2009. Again private financial authority in areas such as carbon trading is based on the willingness of states to cede control to the market rather than use more interventionist regulation.
20. See the UNEP-FI online, http://www.unepfi.org/training/index.html accessed: 18 March 2009.
21. See the UNEP-FI online at: www.unepfi.org/signatories/index.html accessed: 19 November 2009.
22. Author's own calculations.
23. See online at: http://www.evb.ch/es/p25001979.html
24. See the Equator Principles online: http://www.equator-principles.com/index.shtml Accessed: 28 March 2009.
25. See the Carbon Disclosure Project online at: www.cdproject.net/signatory-investor-listing.asp Also see the Global Reporting Initiative online at: www.globalreporting.org/griportal/GRI/OSManagement/frmOSMemberSearch.aspx accessed both: September 2009.

26. UNEP FI, 'Our Signatories', http://www.unepfi.org/signatories/statements/index.html accessed 23 February 2009.
27. See the UNEP-FI online at: http://www.unepfi.org/about/index.html Accessed: 29 March 2009.
28. On the UN Global Compact, see: http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html Accessed: 29 March 2009.

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# 7

# Disciplining the International Political Economy through Finance

*Jakob Vestergaard*

## Introduction

Few would dispute that the past two or three decades have been, in many ways, the heyday of neo-liberalism and market capitalism. Looking back, it is pertinent to ask whether the rise of neo-liberalism over the past three decades made the global economy progressively more free of coercive power and governmental 'interventions'. Has the economic order of the global economy become increasingly 'spontaneous'?[1] Has power, in terms of global economic governance, become more and more diffused and dispersed in this period? I shall strive to demonstrate in this chapter that the opposite is the case. Never have market economies seen intervention in so manifold ways – and in so standardizing and totalizing ways. Never before have predominant modes of global economic governance taken our notion of what a market economy is so far away from a neo-liberal ideal of 'spontaneous order'.

The period since the late 1980s has seen the development of a comprehensive system of 'standards and codes of best practices' for the 'proper' organization and regulation of economies (Vestergaard, 2009a, Thompson, 2011). Thus, today we have standards and codes, recommended policies and appropriate modes of governance on a vast set of issues, ranging from the ways in which science should be turned into business to what is an appropriate form of governance of private corporations. Indeed, when the World Bank (WB) launched its website on corporate governance in 1999, it did so stating that 'the governance of the corporation is now as important in the word economy as the government of countries' (WB, 1999). With regard to the wide range of 'good

governance' standards developed by the WB, Dani Rodrik (2002) noted that these have become so all-encompassing that the state apparatuses of developing countries can at best implement a fraction of them. The WB has also been deeply implicated in developing standards and benchmarks for what it means to be a 'knowledge economy', most notably by developing the so-called Knowledge Economy Index (KEI). Comprised of several dozens of quantitative indicators, this index encourages authorities in countries worldwide to assess the degree to which they may consider their economy a knowledge economy. These are just a few examples of an increasingly pervasive global governance regime – championed by international organizations such as the WB, the International Monetary Fund (IMF) and the Organization of Economic Corporation and Development (OECD) – that has arisen over the past few decades around standards and benchmarks in a vast range of areas.

The present analysis adopts a case study approach to the study of this global economic governance regime, by undertaking an in-depth analysis of the regulatory initiative launched in the wake of the financial crisis in Asia in the late 1990s to strengthen the 'international financial architecture' (IFA), which remain at the core of the current approach to international financial regulation despite its spectacular failure, witnessed by the global financial crisis from 2007 to present (Vestergaard, 2009a, 2009b. In so doing, it deploys Michel Foucault's analysis of disciplinary power as the guiding interpretive grid (Foucault, 1991b). The IFA initiative shows, in a prism, what it has come to mean to govern in the name of the economy.

This chapter first presents the theoretical framework of the research, by means of a brief exposition of Michel Foucault's analysis of disciplinary power ('Theory and methodology'). This theoretical framework is then mobilized for an analysis of the IFA initiative ('Disciplinary power in finance'). It is argued that in the course of the past decade we have seen the emergence of a new regime of international economic governance, and along with that, a new anatomy of the economy ('The economy reinvented'). This is followed by a section that revisits the IFA, seeing it through the lens of Stefano Guzzini's four key problematiques of governance: agency, scope, mechanisms, normative content ('Four problematiques of government'). Finally, a set of concluding remarks are made, summarizing what the analysis tells us about contemporary supranational efforts to ensure global economic order ('Conclusion'): there seem to be no effort to limit governmental interventions in the name of the economy and whatever global economic order may emerge from this, certainly is not a 'spontaneous' one. If there is a dispersion of

power, it is not a dispersion of power that decreases the forces and effects of power. Perhaps what we are witnessing in global economic governance is simply a shift towards a 'subtle form of coercion' (Foucault, 1991b, p. 209).

## Theory and methodology

### Standardization as disciplinary power

Deciding to analyse the global governance regime that has evolved around codes and standards of 'good practices' for the organization and regulation of economies through the lens of Foucault's analysis of disciplinary power, reflects two underlying choices. First, it reflects the choice to analyse this economic standardization as part of a wider system for the disciplining of economies, rather than as part of a wider process of quantification (Porter, 1994, 1995). The present chapter strives, in other words, not so much to examine the process of quantification – with its problems and omissions – but rather the embedding of economic standardization in a wider system of economic disciplining. Second, it entails the privileging of Foucault's analysis of disciplinary power over other analyses of discipline, such as those of a number of British historians (notably, Thompson, 1967), as well as those of Karl Marx (1906), Max Weber (1947, 1950) and various strands of critical theory (Elias, Oestreich, Lukács, Adorno) for which 'social disciplining' and the 'relationship among commodity form, rationalization and discipline' were key themes (Breuer, 1989, pp. 237–239). Given that the overall objective of the chapter is to examine and problematize the emergence of a system of global disciplining, Foucault's analysis of disciplinary power seemed by far the most expedient analytical framework.[2]

### Foucault's analysis of disciplinary power

Michel Foucault's work on disciplinary power was not an investigation into a distant past, but as 'history of the present'. His analysis suggested not that disciplinary power was an invention of the 18th century, but that in the course of the 18th century a *recasting* and a *generalization* of disciplinary power took place, the effects of which we remain subjected to.[3] Whereas before, disciplinary power had been 'negative' in the sense of being expected to fix or neutralize dangers, it now came to play a positive role: to increase as much as possible the utility of individuals. As they came to function more and more as techniques for increasing the usefulness of individuals, modes of disciplinary power moved from their previous marginal position on the confines

of society to the 'most central and most productive sectors of society' (industry, education, military), and became attached to 'some of the great essential functions: factory production, the transmission of knowledge, the diffusion of aptitudes and skills, the war-machine' (Foucault, 1991b, p. 211).

Foucault's analysis of disciplinary power examined the disciplining of individuals in a range of emerging 'modern' institutions, such as the school, the prison and the hospital. In and through these institutions, the human body entered 'a machinery of power' that explained it, broke it down and rearranged it – and in the process of so doing, produced *docile* bodies: bodies that could be 'subjected, used, transformed and improved' (Foucault, 1991b, pp. 136–138). In each of these modern institutions, the effectiveness of the associated system of disciplinary power derived from the same simple set of techniques: *hierarchical observation*, *normalizing judgment* and their combination in procedures of *examination* (Foucault, 1991b, p. 170). With the birth of these disciplinary institutions, the simple division of what is prohibited and what is not is surpassed in importance by a range of codifications that distribute human conduct between a positive pole and a negative pole. From this moment onwards, disciplinary power no longer deals primarily with transgressions of the prohibited, but with the 'whole indefinite domain' of behaviour that is not conforming to a range of norms and standards of human conduct. More specifically, disciplinary institutions exercise over individuals 'a constant pressure to conform to the same model' by bringing into play five distinct operations – comparison, differentiation, hierarchization, homogenization and exclusion – which, taken together, constitute what Foucault referred to as normalizing judgment (Foucault, 1991b, pp. 178–179).

Each of the disciplinary institutions was organized according to the same architecture: that of Jeremy Bentham's *Panopticon*. Originally, this architecture was developed for the purpose of creating prison houses which were effective in surveying and disciplining the inmates and yet economical in terms of resources needed to achieve this. The asylum, the prison, the hospital and the school – all functioned as 'observatories', hierarchizing, normalizing and examining human conduct.[4] The combination of hierarchical observation and normalizing judgment in procedures of examination, ensures the *visibility* of individuals and allows the observer to differentiate and judge them (Foucault, 1991b, p. 184). The examination embeds humans in 'a field of surveillance' and 'engages them in a whole mass of documents that capture and fix them' (ibid.). The procedures of examination entailed a system of

'intense registration' and of 'documentary accumulation' (ibid.) which was crucial to the operation of disciplinary power. First, the individual was rendered a describable analysable object. It was now possible to characterize and assess each human in terms of his individual features – aptitudes and abilities – and in terms of his particular evolution. Second, the procedures of examination made constituted a comparative system which made possible not only the comparison of one individual with another and the calculation of the gaps between them, but also the 'the description of groups, the characterization of collective facts, and the distribution of individuals in a given "population" ' (Foucault, 1991b, p. 190).

At the core of these processes of hierarchical observation and normalizing judgment is the constant division between the normal and the abnormal. At the heart of disciplinary power is therefore a whole set of techniques for supervising and measuring deviations from the norm and for devising corrective reforms of the delinquent. 'Generally speaking', Foucault noted, all disciplinary institutions 'function according to a double mode': On one side, a 'binary division and branding', defining individuals as mad or sane, dangerous or harmless, normal or abnormal (Foucault, 1991b, p. 199). On the other side, 'coercive assignment' and 'differential distribution', defining who an individual is, 'where he must be; how he is to be characterized; how he is to be recognized; how a constant surveillance is to be exercised over him' (ibid.).

Foucault stressed that at the core of all systems of disciplinary power was a mechanism of reward and punishment. This double mechanism of reward and punishment is closely related to the characterization and assessment of human behaviour in different settings in terms of a continuum of good and bad (Foucault, 1991b, p. 180). In systems of disciplinary power, mechanisms of reward and punishment operate at lowest possible cost. Disciplinary institutions make apparent what is considered good behaviour but – to economize on costs – engage in actual reward and punishment only somewhat discontinuously. For disciplinary power to be 'permanent in its effects, even if it is discontinuous in its action', the architecture of these disciplinary institutions all abided to the same principles, encapsulated in Jeremy Bentham's *Panopticon*. The strength of the Panopticon was that the power it exercised over the inmates was at the same time *visible* and *unverifiable*. While the inmate would 'constantly have before his eyes the tall outline of the central tower' from which he was being observed, the architecture was such that the inmate would never be able to verify whether the inspector was actually in the central tower or not. The madman, the patient, the

worker and the schoolboy – they all had to behave *as if* surveillance was perpetual and total, making them the bearers of their own subjection.

**Methodology and data**

Against the background of Foucault's analysis of disciplinary power, I investigate the IFA initiative as a 'programme of government' (Rose and Miller, 1992); as a *vision*, that is, for a more well-functioning international financial system and a package of *governmental technologies and procedures* devised to bring it about, for the mutual benefit of all economies and their populations. More specifically, I examine the IFA initiative in five dimensions, namely in terms of:

- its governmental rationality;
- its techniques of visibilization;
- its envisaged mechanism of reward and punishment;
- its tactics;
- the specific form of docility it called for.

To scrutinize the IFA as a programme of government, in these five dimensions, I focus on a range of policy documents of the International Monetary Fund (IMF) and the World Bank. Of particular interest is the IMF's special website dedicated to explicate the IFA initiative. This website now has been abandoned. In the name of transparency, the website is still online, but one is now met with a warning: 'This factsheet is no longer being updated. The information it contains may, therefore, no longer be current' (IMF, 2010a). The decision to abandon the IFA website does not signal, of course, a shift of interest away from the task of strengthening the stability and resilience of the international financial system. More likely, the abandonment of the IFA website is the result of understandable embarrassment over its guiding construction metaphor: the IFA proved to be a somewhat feeble 'architecture'. It is only the website – and the construction metaphor – that is abandoned, however. The policy documents, the governmental rationalities, the techniques of visibilization, the belief in market discipline: it's all still there, although now the primary web coordinates are new. The main web locations for the IFA-material now are the 'standards and codes' website (IMF, 2010b) and the website for the Financial Sector Assessment Programme (IMF, 2010c), whereas the new central node, successor to the IFA website, is the financial stability website launched in the wake of the global financial crisis of the late 2000s (IMF, 2010d). In analysing the IFA initiative, I draw on a wide range of policy documents and

evaluations, but focus particularly on the Financial Sector Assessment Programme (FSAP) Handbook (IMF, 2005a). This is the master document that contains it all: the governmental rationality of transparency and market discipline; the techniques of visibilization; the technologies of observation, analysis and assessment; the programmes and procedures for corrective reform.

## Disciplinary power in finance

### Recasting the governmentality of 'market discipline'

The IFA initiative was launched in the wake of the Asian crisis to enhance the stability and resilience of the international financial system.[5] For 'mainstream' economists, the Asian crisis had occurred as the result of two closely related phenomena: a lack of transparency, and a failure on the part of the afflicted Asian economies to undertake the necessary upgrading of their financial regulatory and supervisory framework. The contention hence was that financial institutions needed to be properly 'up-graded' before the liberalization of the capital account could be undertaken without 'excessive risk'. The process of financial integration had to be sequenced with the process of financial up-grading. This 'sequencing-thesis' soon became a standard element in IMF and G7 policy discourse.[6]

The importance attributed to transparency was closely related to a rethinking of the notion of 'market discipline'. Key to the notion of market discipline is the presumption of a particular relation between the market and the economy. This relation is characterized, first, by observation and assessment and, second, by reward and punishment. 'The market recognizes, judges and shows if an economy is sound', Ute Tellmann comments, and in so doing, it is as if the market 'knows the "real truth" about an economy' (Tellmann, 2000, p. 13, 2003). Through the mechanism of capital flows, the market rewards or punishes economies according to this knowledge about the 'true' state of economies. Economic discourse expects of 'the market', in other words, that it exerts a disciplinary power upon economies as it 'observes' them. In the wake of the IFA initiative, however, a recasting of the disciplinary role accorded to financial markets took place.

The Asian crisis was widely believed to be caused by 'excessive borrowing' on the part of Asian banks and companies. There was some acknowledgement that 'excessive borrowing' on the part of Asian actors could not have taken place without 'excessive lending' on the part of Western financial institutions and investors; 'it takes two to tango'

(Eichengreen, 1999). At the end of the day, however, Western financial institutions and investors were acquitted of responsibility for they had been 'misled', it was argued, by 'poor data'.[7] When the G7 Finance Ministers presented a report on the Strengthening of the International Financial Architecture at the G7 Summit in Köln, in June 1999, the relation between transparency and 'well-functioning' markets was stressed:

> The availability of accurate and timely information is an essential ingredient for well-functioning financial markets and market economies. Such information is necessary for market participants and should be used by them to make good decisions. It also provides greater incentives for policy-makers to implement sound economic policies. Improved information will help markets to adjust more smoothly to economic developments, minimise contagion and reduce volatility.
>
> (Report of the G7 Finance Ministers, cited from Kaiser et al., 2000, p. 239)

The ability of financial markets to know the truth about economies – and thus to allocate capital to its most efficient uses – was no longer seen as 'natural' and 'automatic', but as *contingent*. A statement by the OECD, on the importance of standards of best practice in corporate governance, captures the essence of the new conventional wisdom: if countries were to 'reap the full benefits of the global capital market' their financial and corporate governance institutions had to be '*credible* and *well understood* across borders' (OECD, 1999, p. 3, emphasis added). Transparency was ultimately a matter of representing economies *in recognizable form*, in other words. By recasting 'market discipline' in this manner, the IFA effectively presumed that the problem underlying the financial crises in East Asia, and other recent financial crises, was not the mechanism of market discipline itself. Rather, the problem was a problem of *visibility*.

**Techniques of visibilization**

To ensure a 'visibilization' of economies, the FSAP was crucial. This set out to identify the 'strengths, vulnerabilities, and risks' of national financial systems and, ultimately, 'help design appropriate policy responses' (IMF, 2005a, p. 325). To achieve these goals, countries would need to *monitor* their financial system soundness, *assess* the effectiveness of their monetary and financial policies, and to *adopt* standards and

codes of 'best practice'. In face of these challenges, there was a strong need for guidance; hence the launching of the FSAP. Overall, this consists of two main components: assessment of compliance with standards and assessment of the stability of the financial system. These two main components then inform a third: assessment of the financial sector's reform and development needs (Hilbers, 2001, p. 2).

The true state of economies was to be made *visible* to financial market participants in terms of their deviances from the standards and benchmarks developed to operationalize the notion of a 'proper' economy. There were two dimensions to this: a set of 'standards of best practice' and a set of 'financial soundness indicators'(IMF, 2005a, 2005b). Standards of best practice were developed in 12 areas, in three main categories. *Policy transparency* involved standards for transparency in data dissemination, transparency in fiscal policy, and transparency in monetary and financial policy. In the area of *financial sector integrity*, standards were developed for banking supervision, securities, insurance, payments systems and anti-money laundering. And finally, with respect to *market integrity*, standards were developed for corporate governance, accounting, auditing and insolvency and creditor rights. In addition to this comprehensive system of standards of best practice, a whole 'new body of economic statistics' was developed around the notion of 'financial soundness' (IMF, 2005a, p. 22). Financial soundness indicators (FSIs) were to make the relative financial soundness of financial institutions visible to themselves, as well as to regulatory authorities and financial market participants. FSIs include 33 indicators covering a range of aspects from capital adequacy and asset quality to profitability and market risk sensitivity. They are grouped into a core set and an encouraged set. The 'core set' covers only the banking sector, reflecting the view that banking sector FSIs are 'essential for surveillance in virtually every financial system' (ibid.). More specifically, the 'core set' included indicators on regulatory capital to risk-weighted assets, nonperforming loans to total gross loans, interest margin to gross income, and liquid assets to short-term liabilities, among others. Data on these indicators are collected for individual institutions and these institution-level data are then aggregated to become material for macro-prudential analysis. In aggregated form, FSIs are a key feature of efforts to 'monitor the financial system's vulnerability to shocks' as well as its 'capacity to absorb the resulting losses' (IMF, 2005a, p. 39).

The assessment efforts of the FSAP were communicated in two main formats: Financial Sector Stability Assessments (FSSAs) and Reports on

the Observance of Standards and Codes (ROSCs). FSSAs focused on financial soundness indicators and a range of quantitative financial risk analyses, whereas ROSCs – the operational name of what were initially termed 'transparency reports' – summarized 'the extent to which countries observe certain internationally recognized standards and codes' (2005a, p. 337). Key findings of ROSCs were, however, included in FSSAs. More specifically, compliance with standards relating to financial integrity and policy transparency were usually reported to authorities in the form of so-called detailed assessment reports, summaries of which were included as part of the FSSAs which were presented to the IMF Board in the context of the Fund's regular surveillance activities. This procedure was seen as particularly important because it situated assessments of compliance with standards in the 'broader context of risks and vulnerabilities that affect the financial system', and thus made it possible to assess the link between standards compliance and overall financial risks. 'Gaps in compliance with standards also provide an input into identifying development needs and desired structural reforms', the IMF stressed, 'to strengthen institutions, markets, and infrastructure' (2005a, p. 338). This was a key reason, the IMF explained, that 'standards assessments are an integral part of the FSAP' (ibid.).

In Foucaultian terms, the FSAP was to render economies visible, accountable and governable by techniques of 'hierarchical observation' and 'normalizing judgment'. The apparatus of observation and corrective training organized in and around the FSAP was to function like a 'microscope of conduct', operating the new analytical categories of 'financial soundness' and standards of 'best practice'. The hierarchized surveillance exercised through FSAPs should not be seen in isolation, however, but as part of a wider 'machinery'; as part of a disciplinary machinery that distributes economies in a permanent and continuous field of visibility. FSSAs and ROSCs were thus to the fullest possible extent to be published electronically on the IFA-websites of the World Bank and the IMF, for the convenience of 'financial markets and other users'; through the publicizing of FSAP findings, economies were to be made visible in terms of their deviation from standards, norms and benchmarks. In terms of the Panopticon metaphor, the FSAP was to produce an effect of 'backlighting'.[8] Without this backlighting, exposing economies in terms of their deviation from standards and benchmarks, and in terms of their differences from one another, economies would not be visible to financial markets in a manner allowing for market discipline. The IFA attributed to the FSAP the role of the 'perfect eye'. The

FSAP was to render it possible for a single gaze to see everything constantly, being both the source of light illuminating everything, and a locus of convergence for everything that would need to be known. The provision of data through the FSAP would assist in building market discipline, enabling 'markets to form judgments as to a country's economic condition and prospects' and hence 'allow for more effective market discipline' (IMF, 2000a, p. 2).

**Reward and punishment**

At the heart of the envisaged disciplinary system of the IFA would function a penal mechanism, rendering the whole indefinite domain of non-compliance to 'proper' economy punishable. The envisioned disciplinary penalty of the IFA was to punish non-observance of standards as well as deviation from FSI benchmarks. Punishment would strive to be corrective in the sense that it would be concerned with increasing compliance and hence reducing gaps. But this system of corrective punishment would only be one element of a double system; a system where reward would be the flip side of punishment, and where rewards should, ideally, be more frequent than penalties.

As a system of disciplinary power, the effect of the IFA would be maximized only to the extent that certain signals in the system would trigger off the corresponding required behaviours. The IFA would evoke a relation between economies, on one side, and supra-national authorities and markets on the other side, which in a double sense would imply a relation of 'signalization'. Assessments of compliance would signal the extent to which international governmental organizations (IOs) deemed further efforts to increase compliance in certain areas necessary. In addition to this direct effect, the signals were intended to work indirectly as well, through financial markets. Capital flows – and the prize of capital – were to provide transmitted and enhanced signals. In essence, the presumed disciplinary mechanism of the IFA was the following:

IOs would make data on compliance with standards and with FSI norms and benchmarks in individual countries available to financial markets. Financial markets would then reward or punish economies according to their degree of compliance with standards and financial soundness benchmarks. Countries with a high degree of compliance would receive higher amounts of foreign capital at a lower price (interest rate), as compared to countries with a low degree of compliance. By creating strong economic incentives in this manner, 'market discipline' was to help enforce the global adoption of 'proper economy' standards (Figure 7.1):

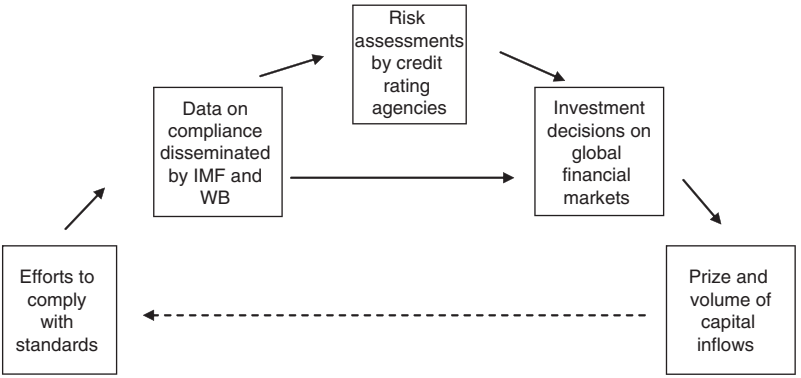


*Figure 7.1* Reward and punishment in the IFA

The purpose of surveillance and assessment in and through the IFA would be, in other words, to place economies in a 'world of signals'. For each FSAP or ROSC, a reaction from financial markets in terms of changes in the relative cost of capital, and a reaction from countries in terms of increased compliance. These relations of 'signalization' would compel economies to strive to conform, the IFA presumed.

Systems of disciplinary power combine the techniques of an 'observing hierarchy' and those of a 'normalizing judgment' in the instrument of the 'examination'. In the IFA, the techniques of an observing hierarchy and those of a normalizing judgment meet in the marketplace: the reactions of financial markets to compliance efforts by economies would be what constituted 'examination' in the disciplinary system of the IFA. Integration with global financial markets means entering a process of 'infinite examination'. To render economies susceptible to this infinite examination in the marketplace, IOs and their private, regional and national partners would place economies in a field of surveillance, situate them in a network of registration, and engage them in a whole mass of assessments that would capture and fix them. Examination in the marketplace would be predicated, in other words, upon a system of intense registration and documentary accumulation, in the form of FSSAs and ROSCs. This would have two main effects. First, it would make possible the reconstitution of the economy as an object describable and analysable in terms of its *vulnerabilities*, its deviation from standards and benchmarks. Second, it would make possible the constitution of a *comparative* system – measuring, comparing, hierarchizing; determining gaps and distributions, in and among different groups of economies.

**Tactics: Low political and economic costs**

One of the key principles of the tactics of disciplinary power is that of obtaining the exercise of power at the lowest possible cost, whether economically – in terms of the expenditure it involves – or politically, in terms of the resistance it may arouse. There is little doubt that part of the reason why 'the international community' found the IFA such an attractive supranational initiative was that it was seen to concord with these principles. As compared to structural adjustment programmes, the rhetoric of the IFA is much 'lighter'. The rhetoric of 'transparency' is a rhetoric of 'truth', and of ensuring the 'proper' functioning of economies in order to promote the stability and resilience of the international financial system. Further, it treats economies as 'equals' in the sense that all economies – small or large, European, African, Asian or American – are subjected to the same standards and reformatory techniques. Finally, allusions are made to the importance of the IFA for the future prosperity of the world's poor.[9] The rhetoric of the IFA is well-aligned, in other words, with a tactics of power that emphasizes the minimization of political 'resistance'. But perhaps most importantly, when it comes to 'low political costs', is the fact that the IFA initiative leaves 'judgment calls' – the actual rewarding or punishing – to 'the market'. Hence, though the IFA entails substantial supranational bureaucracy, the main power exercised is not a governmental, centralized and 'bureaucratic' one, but a politically anonymous, decentralized and private one.

A key characteristic of disciplinary power is that it works by compelling the subjects to be governed to discipline themselves; it compels them to 'become their own guardians'. For such self-disciplining to occur, the disciplinary power exerted must be at the same time visible and unverifiable, Foucault argued. In the case of the disciplinary power of the IFA, the cost of foreign capital is the key reward and punishment mechanism. International capital flows, and differences in the access economies have to them, thus render the disciplinary power of the IFA *visible*. At the same time, however, this power is unverifiable. It is extremely difficult, if not impossible, to isolate and observe the impact on the cost of foreign capital of increasing compliance or financial soundness in some area. Economies therefore are compelled to behave *as if* surveillance, assessment and normalizing judgment – rewarding and punishing according to compliance – is perpetual and total. When economies behave *as if* financial markets observe and assess, and reward or punish them continuously, *as if* the power exerted

by international capital flows is perpetual, they have in effect become their own guardians.

The IFA does not propose any expensive new global financial governance institutions (as some 'radical' proposals suggested). Instead, the effects of the IFA is based on encouraging processes of *self-disciplining* with most costs related directly to the Central Banks and Finance Ministries of the countries enlisting in the FSAP. Further, it does not introduce taxes on capital flows, which by 'the international community' would be seen as expensive in terms of efficiency and growth foregone as a result of the 'distortions' such taxes would (allegedly) create. The IFA was, both politically and economically, a low-cost solution, in other words.

**The formation of docile economies**

A system of disciplinary power operates according to a twin mechanism of 'binary division' and 'differential distribution' said Michel Foucault. This was the essence of the IFA as well. Economies were depicted as 'proper' or 'improper', and measured and distributed in terms of their degree of deviation from standards and benchmarks. In and through this twin mechanism of binary division and differential distribution, the IFA defined not only what a 'proper' economy is, how it should be characterized and recognized, but also how a constant surveillance was to be exercised over it: how it should be organized and regulated. At the end of the day, it was the operation of this twin mechanism that was to ensure that economies were rendered visible to financial markets in a manner that allowed for market discipline. Thus, whereas originally countries were expected only to observe and comply with a fairly limited set of 'sound' macroeconomic policies, loosely connected with the 'Washington consensus', compliance became much more demanding with the launching of the IFA.

The standards define how to properly organize and regulate an economy, including how to properly conduct, organize and regulate business and credit. IFA standards are closely related to the rationality of a market-based financial system. More specifically, IFA standards are predicated upon the idea that the allocation of capital should take place, to the largest possible extent, via capital markets – and with largest possible 'market sensitivity'. This criterion of 'market sensitivity' is perhaps more to the point in describing IFA standards than the traditional 'market-based' versus 'bank-based' dichotomy. Whether in terms of accounting practice, or in terms of risk management, IFA standards endeavour to

promote 'market sensitivity'. IFA standards imply a type of financial system that endeavours to make the allocation of capital and credit as 'market-sensitive' as possible. The comparative capitalism literature suggests that financial system institutions are particularly important, if not dominant, in the configuration of modern capitalist economies (Jackson and Deeg, 2006, p. 32). Hence, although IFA standards relate primarily to the 'financial system' dimension, adopting IFA standards is likely to affect a range of other institutional domains (Vitols, 1996, 2001). To the extent that the IFA initiative succeeds in enforcing the adoption of standards of 'best practice' in economies worldwide, it is not just institutions in the area of financial intermediation and corporate governance that are involved, but models of capitalism as such.

In Foucaultian terms, the IFA purported to make economies safe, not by providing a strong, solid architecture, around them – but by making them visible, from the inside out. The strategy was to make economies safe by bestowing visibility upon them. Once this visibility is achieved, mechanisms of 'market discipline' would guide and pull economies towards safety, the contention went. This new 'architecture' – ensuring visibility and providing guidance – purported to transform the economies it offered shelter. By making it possible to know their vulnerabilities, it would make it possible for them to become 'proper' economies. The IFA set out to establish in economies a constricting link between an increased aptitude and an increased domination. The disciplinary power of the IFA aimed to both increase and decrease the forces of economies: it sought to *increase* the forces of the economy in economic terms of utility, and to diminish them in political terms of obedience, to paraphrase Foucault. From this perspective, then, the global financial market is intended to be to the formation of docile economies what the disciplinary institutions of the school, the prison and the hospital are to the formation of docile bodies. It is in and through the global financial market, that economies are to be observed, assessed and disciplined.

## The economy reinvented From exceptional to generalized discipline

The operational logic of the IMF was always one of surveillance and disciplining. Pressure to adhere to standards has been an institutionalized part of the IMF since its inception (Peet, 2003, p. 64). The disciplinary power introduced with the IFA hence was not the first instance of a mode of international economic governance subscribing to notions of discipline. What occurred with the rise of the IFA was not an invention

of discipline, but a shift from 'exceptional' to 'generalized' discipline. Whereas originally codes of conduct pertained only to exchange rate management, the IFA initiative vastly expanded the range and scope of normalized and codified conduct. The expansion of the range of codified conduct was accompanied by an expansion of the 'jurisdiction' of disciplinary techniques. With the IFA, efforts to discipline economies moved from being limited to certain situations and circumstances to being permanent and all-pervasive. The focus of the IMF's attention thus was no longer on companies in balance-of-payments crisis; the IMF was now concerned with the disciplining of *all* economies, in the best interest of the 'proper functioning' of individual economies as well of the international financial system as such. 'Exceptional discipline', targeting economies in balance-of-payments crisis, has been replaced by 'generalized' surveillance and disciplining of all economies.

Structural adjustment programmes were 'negative' in the sense of being expected to fix or neutralize the dangers associated with balance-of-payments crises, and to roll back as many government 'interventions' in the economy as possible, by processes of deregulation and privatization. The disciplinary power of IFA, on the other hand, was to play a 'positive' role, seeking to shape and reshape 'proper' economies by a process of 'political-institutional engineering'. Whereas previously mechanisms of power had, in a sense, proceeded by 'deduction', the IFA introduced power mechanisms that were 'generative', endeavouring to enhance the productive efficiency of economies *from within*. A form of power consisting in *dismantling* certain aspects of 'body polities', aspects considered malign, was replaced by a generative form of power, *investing* economies with 'proper' modes of organizing and regulating economies.

With the rise of the IFA, power exerted upon economies became more anonymous and more functional. Foucault noted that, in the case of governing individuals, the generalization of disciplinary power involved not only a generalized surveillance and disciplining, but also a 'lighter, more rapid, more effective, subtle coercion'. The shift from the IMF's structural adjustment programmes, for countries in crisis, to a generalized system of standards of 'best practice', similarly entailed a shift towards a lighter, more-subtle coercion. We may speak of two images of discipline in international economic governance. The first image of discipline is that of the 'crisis-struck' economy, subjected to structural adjustment programmes in exchange for emergency financing. The other is that of the international financial architecture; a supranational governmental effort that endeavours to improve the exercise of power

by making it 'lighter', but permanent and pervasive in its scope and its effects.

The disciplinary power of the IFA is opposed to the more 'judicial' power of the Washington consensus. Structural adjustment programmes operated not by *differentiating* economies, but by specifying acts according to a number of general categories, such as deregulation and privatization; not by *hierarchizing*, but quite simply by bringing into play the binary opposition of the permitted and the forbidden; not by *homogenizing*, but by operating the division, acquired once and for all, of condemnation of certain modes of state 'intervention' in the economy. With the disciplinary power of the IFA, the simple division of the prohibition, as practised in penal forms of justice, was replaced with a distribution between a positive pole and a negative pole. In this sense, the post-Washington consensus, with its continuum from 'improper' to 'proper' economy, marked a shift from a 'judicial' to a disciplinary form of penalty in international economic governance.

*A new anatomy of the economy* The disciplinary power of the IFA was written simultaneously in two dimensions: one 'anatomical', the other 'technico-political'. In its anatomical dimension, the IFA evoked a norm of 'proper' economy, depicting how an economy should be organized and regulated. In its technico-political dimension, on the other hand, it defined and launched a set of procedures to assist countries in becoming 'proper' economies. In the former dimension, the IFA was a question of functioning and explanation, whereas in the latter, it was one of submission and reform. On one hand, a docile economy, and on the other hand, an intelligible economy. The two dimensions overlap, of course. At the centre reigns the notion of 'standards of best practice'; essential both in defining the norm and in creating a path towards it. In and through these standards of good practice, the analysable economy joins the manipulable economy. This docile and intelligible economy, analysable and manipulable, was a radical departure from 'the economy' of the Washington consensus. The IFA initiative conceives of economies as 'organisms'; they are 'exercised' economies – economies that are to be 'shaped and trained'; economies that are to 'obey, respond, become skilful' and thereby increase their forces. Compliance with the requirements of 'proper' economy replaces the simple mechanics of 'getting the prices right'. Through the invention of a micro-analytical gaze, a new object came into being. The 'mechanical' economy of the Washington consensus was superseded by the 'organic' economy. Contrary to the mechanical economy, the organic economy is the bearer of forces and the seat of duration; it is susceptible to

specified operations, which have their order, their stages, their internal conditions and their constituent elements. This new 'organic' economy would be in constant evolution, vis-à-vis the set of standards and indicators developed to delineate the norm of 'proper economy'. The 'organic' economy of the post-Washington consensus quietly replaced the economy of 'rational mechanics', which had dominated the preceding 100 years of macroeconomic discourse (Mirowski, 1989).

**A new regime of economic governance**

It was not the first time 'the economy' had been the object of 'imperious and pressing investments'. There was, however, a number of ways in which the governmental techniques of the IFA were new. First, there is the *scale of control*: no longer was it a matter of treating the economy, *en masse*, 'wholesale', as if it was an indissociable unity, but rather of working it 'retail'; replacing a macroeconomic with a microeconomic gaze. Second, there is the *object of control*: no longer was it macroeconomic performance – expressed in terms of balances and imbalances – that was the object of control, but rather the internal organization of its relations. Third, there is *the modality*: instead of supervising the *result* of economic policies, now it was the *processes* of a wide range of governance activities that would be subject to control, exercised according to the multidimensional codification of 'proper' economy. New techniques aimed to render possible the meticulous control of the operations of the economy, to assure the constant subjection of its forces, imposing on them a relation of docility–utility. What took shape was a 'policy of coercions' that acted upon the economy, a calculated manipulation of its elements, its organization and regulation. Through these techniques, through this 'policy of coercions', the economy would enter a machinery of power that would explore it, break it down, and rearrange it.

The IFA marked a new regime in international economic governance. From a regime predicated on the binary division between economies that are in crisis and economies that are not, to one predicated upon the binary branding of proper versus improper economy; from localized and confined interventions dealing with economies transgressing the permitted-prohibited boundary, to the constant measuring and governing of economies against a norm of 'proper' economy. Whereas economies in balance-of-payments crises were met with separation, the IFA approaches all economies with segmentations, multiple separations, individualizing distributions, an organization with a depth of surveillance and control, an intensification and ramification of power.

## Four problematiques of government: The IFA revisited

### What is the functional scope of the order?

The scope of the IFA initiative is broad. Areas of standardization range from accounting and banking supervision to corporate governance and creditor rights. The total 12 areas of standardization fall in three main categories: those relating to policy transparency, financial sector integrity and market integrity, respectively (Vestergaard, 2009a, p. 92) (Table 7.1).[10]

It is beyond the scope of this chapter to depict these different areas of standardization in any detail. What can be done, however, is to depict their functional scope by summarizing the main ways in which countries complying with them were expected to benefit:

1. If a country complied with these standards, it would *strengthen its economic institutions*, and thus strengthen its financial system in particular as well as its economy more generally.
2. By complying with standards, countries would be able to *borrow foreign capital at lower interest rates*, because financial markets would then consider these 'less risky' and reward them in terms of a lower cost of capital.
3. There would be the significant benefit of *reducing the impact of an external crisis*, because compliance with standards could ensure continued access to foreign capital, in situations where this would have been difficult in the absence of compliance.
4. As a consequence of the lower cost of foreign capital, achieved by compliance to standards, the *solvency of governments would be higher* – and thus compliance could in some cases even help prevent a financial crisis (IMF, 2003, p. 26).

In sum, these factors would all contribute to increasing the stability of the domestic financial system. At the international level, compliance

*Table 7.1* Overview of standards of 'best practice'

| Policy transparency | Financial sector integrity | Market integrity |
|---|---|---|
| Data dissemination | Banking supervision | Accounting |
| Fiscal policy transparency | Securities | Auditing |
| Transparency in monetary and financial policy | Insurance | Corporate governance |
| | Payments systems | Insolvency and creditor rights |
| | Anti-money laundering | |

to standards would increase transparency and thus result in 'better informed lending and investment decisions' and – by thus allowing for 'more effective market discipline' – would result in 'greater financial stability' at the international level (IMF, 1999, p. 2). In more general terms, adherence to international standards and codes was expected to ensure 'that economies function *properly* at the national level', which was seen as 'a key prerequisite for a well-functioning international system' (IMF, 2000b, p. 3, emphasis added).

**Who are the orderers?**

In terms of agency, the IFA initiative originated in a decision by G7 leaders, in October 1998, to task Dr Hans Tietmeyer, President of Deutsche Bundesbank, with preparing a report on how a Financial Stability Forum (FSF) could be set up to 'promote stability in the international financial system' (FSF, 2007a).[11] Tietmeyer's report, presented in February 1999, was endorsed by the G7 countries, and the FSF was convened in April 1999. A key task for the Financial Stability Forum was to identify, 'economic and financial standards that are internationally accepted as important for sound, stable and well functioning financial systems' (FSF, 2007b), and to devise a strategy for promoting the implementation of the standards, mobilizing the resources and efforts of the IMF, the Bank of International Settlements and the World Bank. Developing such standards, and promoting their global adoption, became the gravitational centre of the IFA initiative. A wide range of public and private institutions – including 'all major standard setting bodies' (IMF, 2005a, p. 329) – contributed to the development of standards and codes of good practice (Table 7.2):

Responsibility for coordinating the efforts across the three main categories of standardization – policy transparency, financial market

*Table 7.2* Types of actors in the standard-setting process

| | |
|---|---|
| Intergovernmental groupings | G7; G8; G10; G20; G24; G77; APEC; Commonwealth |
| International regulatory and supervisory groupings | Basle Committee on Banking Supervision (BCBS); Committee on the Global Financial System (CGFS); Committee on Payment and Settlement Systems (CPSS); Financial Action Task Force (FATF); International Association of Insurance Supervisors (IAIS); International Organization of Supreme Audit Institutions (INTOSAI); International Organization of Securities Commissions (IOSCO) |

*Table 7.2* (Continued)

| | |
|---|---|
| International agencies and institutions | Bank for International Settlements (BIS); International Monetary Fund (IMF); Organization for Economic Cooperation and Development (OECD); Regional Development Banks (IADB; AfDB); United Nations Agencies; The World Bank |
| Professional Associations | International Accounting Standards Board (IASB); International Federation of Accountants (IFAC); International Federation of Insolvency Professionals (INSOL) |
| Consultative for a | Financial Stability Forum (FSF); G30 |

*Source*: Emmenegger (2006) and IMF (2005a).

integrity and market integrity – was assigned to the IMF and the World Bank.[12] In the former category, the IMF was also the key norm-setting agency, whereas in the second category, it was a wide range of international regulatory and supervisory groupings – including the Basel committee and the International Association of Insurance Supervisors – that were the key players. In the market integrity category, however, the lead was taken by a number of (private) professional bodies. Taken at face value, private authority was indeed most influential in the area of market integrity, but it should be stressed that bodies such as the main lobbying organization of international banking industry – the Institute of International Finance – in fact played a major, albeit indirect, role in the development of standards in banking (Lall, 2011). Hence, through both direct and indirect channels of influence, the IFA initiative marks an increase in the formal power of private forms of authority: standards developed by various professional bodies of accountants, bankers and financial traders become the new guiding principles of global economic governance (Table 7.3).

**How is ordering achieved?**

Initially, the G7 countries envisaged a strong enforcement regime, with a key role played by the IMF and the World Bank (Thirkell-White, 2007). Compliance with standards and codes were to be enforced not only through FSAPs and ROSCs themselves. Operational procedures were designed so that FSAPs would 'feed into the IMF's Article IV consultation process through close linkages with IMF's surveillance activities' and 'serve as input into Bank's social and structural reviews, country assistance strategies, and other operations of the World Bank' (IMF,

*Table 7.3* Agents in IFA standard-setting

| **Financial sector integrity** | | **Market integrity** | |
|---|---|---|---|
| **Standard** | **Agent** | **Standard** | **Agent** |
| Banking supervision | Basel committee | Accounting | International Accounting Standards Board (IASB) |
| Securities | International Organization of Securities Commissions (IOSCO) | Auditing | International Federation of Accountants (IFAC) |
| Insurance | International Association of Insurance Supervisors (IAIS) | Corporate governance | WB; OECD |
| Payment systems | Committee on Payment and Settlement Systems (CPSS) | Insolvency and creditor rights | International Federation of Insolvency Professionals (INSOL) |

2005a, p. 326). More specifically, there were three 'formal' enforcement mechanisms which were intended to supplement FSAPs and ROSCs: Conditionality; the Contingent Credit Lines scheme; and, as mentioned, Article IV consultations. For each of these enforcement mechanisms there were, however, substantial difficulties.

Conditionality refers to the practice of giving loans only on the basis of certain conditions, which first began in 1952. Since then, conditionality has been a key mechanism for the IMF in enforcing particular types of policies. When the standards initiative was launched in 1999, the idea was to incorporate the degree to which countries complied with standards of 'best practice' in loan conditionality: only if countries made the agreed progress in complying with standards of 'best practice' would IMF approve the later phases of the loan. The G24 countries were in ardent opposition to this, however, and eventually successfully resisted proposals to include standards of 'best practice' in loan conditionality.

The degree to which member countries adopted standards of 'best practice' was thought to be a key issue in 'Article IV consultations'. These consultations take the form of annual audits of each member country by the IMF. G7 Finance Ministers had given 'high priority' to

'developing a system for surveillance of implementation of the codes and standards, built on the Article IV process of the IMF', including 'systematic incorporation of information on a country's observance of transparency standards in the Fund's regular Article IV surveillance reports' (Kaiser et al., 2000, p. 241). A recent IMF evaluation observed, however, that seven years later recommendations from FSAPs had 'not yet been fully mainstreamed into Article IV assessments' (IEO, 2006, p. 10). The report asserted that this was due to use of 'cautious language' in FSSAs, 'loss of candor' at the 'critically important stage' of transforming FSSAs into staff reports for the Article IV consultations, and due to continued emphasis on macroeconomic policies in Article IV consultations.[13] Whatever the reasons, the under-utilization of FSAP data by the IMF itself is a rather grave problem from the perspective of standards enforcement.

In the spring of 1999, in the wake of the financial crisis in Asia, the IMF introduced the Contingent Credit Lines (CCL). The CCL was particularly targeted at countries with 'sound policies', which were therefore 'not at risk of an external payments crisis of their own making', but only at risk by being 'vulnerable to contagion effects from capital account crises in other countries' (Kenen, 2001, p. 94;). Countries were to sign up for the CCL in advance of any payments crisis, and hence only if a country met CCL criteria would it be eligible for this particular type of financing, should it be afflicted by a crisis. Countries that did meet the 'eligibility criteria' would, on the other hand, be able to draw on 'large pre-specified amount of resources if hit by a financial crisis due to factors outside of the member's control' (ibid.). Criteria to be met included 'a positive assessment of policies and progress toward adherence to internationally accepted standards' (ibid.). The rationale of the CCL was that, by incorporating standards in its qualification provisions, countries would be required to comply with standards at all times, or risk losing access to financial support from the IMF in a crisis. Eventually, no countries signed up for the CCL, however, and the facility was abandoned by the IMF in 2003.[14]

In sum, none of the three envisaged enforcement mechanisms were effective. At the end of the day, the adoption of standards hence rested entirely upon voluntary participation in ROSCs and FSAPs, encouraged by 'market discipline'.[15]

**What is the normative content of the order?**

Taken together, the IFA standards codify an Anglo-American approach to economic governance and the IFA initiative hence effectively

encourages economies worldwide to reform and restructure, in the *image* of Anglo-American capitalism (Vestergaard, 2009a). But the regime of global disciplining launched with the IFA initiative will not in any straightforward manner render economies Anglo-American in their organization and regulation. In several economies there is considerable institutional and political resistance against such impetus. The point remains, however, that a universal standard has been set, against which economies today measure their deviation. Though seen as universal, these standards – whether for financial accounting, auditing or corporate governance – correspond to an Anglo-American mode of capitalism. To 'strengthen the international financial system' in and through these standards is to *normalize* an Anglo-American mode of organizing and regulating economic activities. The standards define how to properly organize and regulate an economy, including how to properly conduct, organize and regulate business and credit. In short, they define a universal norm of 'proper' economy. To the extent that standards are accepted and adopted they constitute powerful disciplinary mechanisms. The end result of such processes remains uncertain, however. Not only do standards invariably meet some degree of resistance and/or creative adaptation; Anglo-American capitalism is itself 'an evolving set of institutions, not a constant' (Dore, 2000, p. 103). So whereas it is safe to say that the past decade has seen a *normalization* of Anglo-American capitalism – in the sense of being evoked as the global norm of 'proper' economy – it would be going too far to claim that a *globalization* of Anglo-American capitalism is occurring. Perhaps one could speak instead of a *totalization* of Anglo-American capitalism, deploying a concept coined by Ronen Palan:

> There is a subtle but important difference between totalising processes and the concept of a totality. Totalising means a system of thought and practices which seeks to universalize and dominate its surroundings; such systems are expansionary but they never truly obtain their goal: they never create a truly total system.
>
> (Palan, 2000, p. 16)

## Conclusion

In the aftermath of the financial crisis in East Asia, Robert Rubin, then Secretary of the US Treasury, stressed the need to strengthen the 'architecture' of the international financial system. The term 'international financial architecture' (IFA) was soon widely adopted in the

debate. The standards and codes launched through the IFA brought into being something new and remarkable: a norm for the 'proper' organization and regulation of economies. The governmental technologies devised to render this norm of 'proper' economy operational ranged from standards of accounting to standards of corporate governance and financial risk management. In and through the IFA, an international governmental programme had taken shape which – to paraphrase Michael Power – was 'without precedent in its attempt to reach into the micro-managerial world' of banks and companies (Power, 2005, p. 583).

The IFA initiative marked a new vision for global economic governance. In the name of transparency and financial system stability, the IMF and the World Bank led efforts to promote global compliance with standards of 'proper' economy. The focus was no longer on whether governments pursued a certain set of 'sound' macroeconomic policies or not, but on whether *economies as such* were seen to be 'proper' or not – notably, whether private companies and banks were operated and governed appropriately. This represented a fundamental shift in international economic governance. The IFA established a comprehensive system of supranational normalization, surveillance and corrective reform, to *discipline* economies; to ensure the formation of *docile* economies. It was a shift from 'exceptional' disciplining of individual economies that were temporarily in balance-of-payments problems, to generalized surveillance of all economies at all times, measuring their degree of deviation from a norm of 'proper' economy. This generalized surveillance required that a multi-dimensional international technocracy be built, charged with continuously assessing deviations and providing guidance for countries in their efforts to subsequently reduce registered deviations and deficiencies.

The comprehensive system of economic standardization, surveillance and corrective reform, launched in and through the IFA initiative, is unprecedented in the history of international economic governance. First, the power exercised by IOs, in the name of macroeconomic and financial stability shifted from 'exceptional' intervention, in cases of balance-of-payments crises, to 'generalized' surveillance and disciplining of all economies, at all times. This involved, further, a fundamental shift in how economies were conceived, analysed and intervened in, by which the previous 'mechanical' economy of macroeconomic balances was replaced by an 'organic' economy of vulnerabilities, weaknesses, gaps, deficiencies and deviations.

## Notes

1. The intellectual father of neo-liberalism, Friedrich von Hayek, based much of his thinking on two binary opposition between social order that is 'designed' – consciously planned by human reason – and social order that is 'spontaneous'; the unintended 'grown' outcome of the actions of individuals (Hayek, 1980 [1946]).
2. This also goes to explain why I have chosen to focus exclusively on Foucault's original texts (1991a, 1991b) at the expense of an engagement with either the huge body of literature interpreting, assessing or criticizing Foucault's oeuvre (Dreyfus and Rabinow, 1983; Philp, 1985; O'Neill, 1986; Gutting, 1989, 1994; Kusch, 1991; Ransom, 1997) nor the vast body of literature building specifically on Foucault's notion of 'governmentality' (Miller and Rose, 1990, 2008; Burchell et al., 1991; Rose and Miller, 1992; Rose, 1996, 1999; Hindess, 1998; Dean, 1999; Lemke, 2001; Larner and Walters, 2004; Binkley and Capetillo, 2009; Neumann and Sending, 2009).
3. The following is a somewhat condensed summary of Foucault's work on disciplinary power. For a more elaborate exposition, see Vestergaard (2009a, pp. 102–121).
4. In Bentham's words, the Panopticon was 'a great and new instrument of government', the excellence of which consisted in 'the great strength it is capable of giving to any institution it may be thought proper to apply it to' (Bentham, 1787).
5. There is a vast literature now on the IFA initiative (Thirkell-White, 2007; Soederberg, 2005; Best, 2003a, 2003b; Hanson, 2003; Schneider, 2003, 2005; Singh, 2003; Mosley, 2001, 2003). Most of this literature is descriptive rather than theoretical, and none of it deploys theory to analyse the IFA as a system of disciplinary power.
6. 'Economic theory aside, experience has demonstrated that liberalizing the capital account before the home country financial system has been strengthened can contribute to serious economic problems . . . [A] country opening its capital account must do so in an orderly, gradual, and well-sequenced matter' (IMF, 1999, pp. 5–6). Note also, that the FSAP Handbook (IMF, 2005a) devotes an appendix to precisely these 'sequencing' issues.
7. In the words of two World Bank economists: 'The findings suggest that these countries [Indonesia, the Philippines, the Republic of Korea, and Thailand] did not follow International Accountancy Standards and that this likely triggered the financial crisis. Users of the accounting information were misled and were not able to take precautions in a timely fashion . . . [S]ocieties' preferences should favor greater openness and transparency . . . [Disclosing] financial information directs capital to its most productive uses, leading to efficiency and growth' (Viswanath and Kaufman, 2001, pp. 44, 51; emphasis added).
8. 'By the effect of backlighting, one can observe from the tower, standing out precisely against the light, the small captive shadows in the cells of the periphery. They are like so many cages, so many small theatres, in which each actor is alone, perfectly individualized and constantly visible' (Foucault, 1991b).

9. When legitimizing the need for a global standard of corporate governance, for instance, the World Bank referred to the substantial social costs of the financial crises of the 1990s: 'Corporate governance was lent new urgency by the global financial crises which unleashed unprecedented volatility in markets, led to devaluation, default and capital flight, with the brunt borne by the poor. Reform on governance can no longer be viewed as a national or local issue for any corporation: globalization has brought in its wake the need for international coordination of effort to ensure that growth is sustained and shared' (World Bank, 1999, emphasis added).
10. Nomenclature for the three different areas varies. The FSAP Handbook uses the categories transparency standards; financial sector and financial integrity standards; and financial infrastructure standards. In other IMF reports, the following three categories are used: policy transparency; financial sector regulation and supervision; and market integrity. In the section above, I have combined these two nomenclatures, to arrive at a simple yet informative version.
11. Tietmeyer's report was formally known as the report on 'International co-operation and coordination in the area of financial market supervision and surveillance'. See Tietmeyer (1999).
12. IMF coordinated efforts in the first two main areas of standardization (policy transparency and financial sector integrity), and the World Bank in the latter (market integrity).
13. The continued emphasis on macroeconomic policy issues reflected, the report argued, that this is where the knowledge and expertise of the majority of Executive Board members continues to lie, irrespective of attempts by the IMF to reinvent itself (IEO, 2006, p. 11).
14. This complete failure of the CCL was a surprise to the IMF. Reflecting on the reasons, IMF Directors contended that 'potentially eligible countries may have lacked confidence that a CCL would be viewed as a sign of strength rather than weakness' and 'may also have been concerned about the risk of negative fallout if they were to be considered ineligible at a future date' (IMF, 2003).
15. Soon after the launching of the IFA, Peter Kenen of the Washington-based Institute of International Economics expressed scepticism about its reliance on 'market discipline'. 'The official community appears', Kenen observed, 'to count heavily on market discipline to foster compliance with these codes' (Kenen, 2001, pp. 110–111). 'Thus far, however', he continued, 'the private sector seems to know little about the various standards and codes or the Fund's efforts to publicize its findings concerning compliance with them' (ibid.). 'For this and other reasons', he concluded, 'it may be imprudent to rely mainly on market discipline' (ibid.).

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# 8

# The Diffusion of Power and the International 'Discovery' of 'Diasporas'[1]

*Rahel Kunz*

## Introduction

> *Transnational diaspora networks have become global forces shaping the relationship between countries, regions and continents*.[2]

At the core of the 'diffusion of power' debate lies the heightened influence of non-state or civil society actors[3] in global governing and its implications for state power. Existing literature on the diffusion of power has focused on various actors, such as multinational firms, non-governmental organizations (NGOs) or criminal actors (Cutler et al., 1999; Hall and Biersteker, 2002; Higgot et al., 2000). Yet, a recently 'discovered' civil society actor that supposedly plays an increasingly important role in international affairs has not received much attention in this literature: 'the diaspora'. In what has been termed the 'discovery of expatriate populations' (Larner, 2007, p. 334), recent years have seen an increasingly prominent discourse that portrays diasporas as newly emerging transnational actors, accompanied by a growing number of state, non-state and international institutions reaching out to expatriate populations. Diasporas have made it into policy documents and programming of a myriad of international organizations and 'it is widely recognized that diasporas have an enhanced presence on the world stage today' (Vertovec, 2006, p. 3). Thereby, diasporas have become portrayed as a key civil society actor in international politics taking the role of development agents, transnational investors, promoters of trade and tourism, political activists, conflict instigators or peace brokers.

By now, there is a rich literature on expatriate populations and their activities (Shain, 1989; Østergaard-Nielsen, 2003; Newland, 2004;

Van Hear et al., 2004; de Haas, 2006; Vertovec, 2006; Brinkerhoff, 2008; Gamlen, 2008; Mohamoud and Osman, 2008). This literature has so far mainly focused on the forms of expatriate involvement and the policies of countries of origin towards their expatriate populations. A distinction is commonly made between 'good' and 'bad' expatriate activities, as illustrated in 'Diasporas good? Diasporas bad?' (Vertovec, 2006). Thereby, 'good' expatriate activities include remittances, investment and the funding of development projects in the country of origin; the promotion of trade and tourism; the transfer of knowledge and technology to the countries of origin; disaster relief, conflict prevention, peace-building or post-conflict reconstruction; political activities in the country of destination. 'Bad' expatriate activities entail the fuelling and funding of armed conflicts or terrorism, and also the failure to integrate in the country of destination. Moreover, this literature documents the temporal and spatial variety of states interacting with their expatriates, ranging from courting to killing (Larner, 2007; Ragazzi, 2009). Some governments attempt to police or even kill their expatriates (e.g. Libya or Russia), whereas others instrumentalize them for lobbying, as for example in the case of Israel or Mexico, or actively promote their emigration in the form of 'labour export', as is the case for the Philippines (Shain, 1989; Martínez-Saldaña, 2003). Yet, there is as yet not much written about the broader implications of the promotion of diasporas as actors in the international arena in terms of changing forms of governance and power, and in terms of the broader transformations of state–civil society relations.[4] This chapter addresses this blindspot by situating the recent international 'discovery' and promotion of the diaspora as an increasingly important civil society actor in the broader 'diffusion of power' debate.

As outlined in the Introduction, the 'diffusion of power' is prominently understood as an instance of transfer of power away from the state towards civil society, based on an understanding of governing as steering. This conceptualization has been critiqued by governmentality scholars regarding its zero-sum understanding of power, (whereby an increase in the influence of non-state actors equals a reduction in state authority) and its tendency to theorize civil society as a field devoid of power and as an antidote to the political power of the state (Neumann and Sending, 2010, p. 115). This leads to a failure to explore 'the power at work in the actual practices through which governance takes place, as well as the more specific content or logic of the relations between state and non-state actors' (ibid., p. 112). Instead, governmentality scholars suggest that it is more useful to understand the increasing involvement of civil society actors in global governing as 'an expression of a

changing logic or rationality of government' (Sending and Neumann, 2006, p. 652). As Rose and Miller state:

> (T)he question is no longer one of accounting for government in terms of the 'power of the State', but of ascertaining how, and to what extent, the state is articulated into the activity of government: what relations are established between political and other authorities; what funds, forces, persons, knowledge or legitimacy are utilized; and by means of what devices and techniques are these different tactics made operable.
>
> (Rose and Miller, 1992, p. 177)

Based on Foucault's de-centred understanding of the functioning of power, his insistence on the productive dimension of power, and an understanding of governing as ruling (see Introduction), a governmentality approach avoids essentializing the state, and shifts the focus towards the various sites where governance takes place, and towards the mechanisms and power dynamics involved in governing (see also Vestergaard, Chapter 7; Aalberts, Chapter 9). Thus, the aim is to study 'the sociopolitical functions of governance in their own right and seek to identify their rationality as governmental practices' (Sending and Neumann, 2006, p. 652). Rather than focusing on the dispersion of power, the aim is to analyse the ways in which private–public boundaries are redrawn and the two domains redefined. Thereby, the state and civil society no longer necessarily stand in opposition to each other, but the involvement of civil society actors in governing can be seen as a particular rationality and technique of governing: 'the distinction between the domain of the state and that of society, itself becomes an object of study, [...] these differentiations are no longer treated as the basis and the limit of governmental practice, but as its instrument and effect' (Lemke, 2001, p. 201).

In the context of the emergence of new governmental rationalities in late modern society, one form of exerting power has gained increasing popularity: governing at a distance. Broadly defined, this refers to a way of governing through agents other than 'the state' – such as international organizations, private actors or civil society organizations – or through self-governing, whereby subjects internalize certain norms and discipline themselves and others to comply with them.[5] Forms of governing at a distance include:

> mechanisms through which it becomes possible to link calculations at one place with action at another ... This involves alliances formed

> not only because one agent is dependent upon another . . . , but also because one actor comes to convince another that their problems or goals are intrinsically linked, . . . that each can solve their difficulties or achieve their ends by joining forces or working along the same lines. This is not so much a process of appealing to mutual interests as of . . . *intéressement* – the construction of allied interests through persuasion, intrigue, calculation or rhetoric.
>
> (Miller and Rose, 1990, pp. 9–10)

Governing at a distance operates through spatial distance (through linking 'a multitude of experts in distant sites to the calculations of those at a centre') or through constitutional distance (through 'the decisions and endeavours of non-political modes of authority' [Rose, 1999, pp. 49–50]). Thereby, new space is created for expert knowledge and interventions (Rose, 1993, p. 292). Governing at a distance works both within the state, through fostering individual and collective responsibilities, and beyond the state, through the active engagement of state and non-state actors. This leads to a redrawing of public–private boundaries, a redefinition of these domains, and the transformation of state–civil society relations. Thereby, 'civil society is redefined from a passive object of government to be acted upon and into an entity that is both an object and a subject of government' (Sending and Neumann, 2006, p. 652). The concept of governing at a distance allows us to analyse the functioning of a new governmental rationality characteristic of late modern society (Rose, 1999; Sending and Neumann, 2006). Using this concept can capture the possibility that the 'diffusion of power' does not necessarily mean less, but can mean more or different forms of governance involving new forms of power, as Larner states: 'while neo-liberalism may mean less government, it does not follow that there is less governance' (Larner, 2000, p. 11).

The increasing prominence of governing at a distance is situated in the context of recent forms of neo-liberalism. Whereas early 'roll-back' phases of neo-liberalization were preoccupied with the 'active destruction and discreditation of Keynesian-welfarist and social-collectivist institutions', recent 'roll-out' neo-liberalisms focus on 'the purposeful construction and consolidation of neo-liberalized state forms, modes of governance, and regulatory relations' (Peck and Ticknell, 2002, p. 384). These forms of neo-liberalism are more socially interventionist, disciplining and ameliorative; legitimize new forms of governance, institution-building and governmental intervention; and focus on the conduct of subjects (ibid., pp. 290, 385). In this context, civil society

actors are increasingly encouraged to get involved in the governing of welfare and development issues, for example, which has fuelled debates about the 'diffusion of power'. This results in a growing responsibilization of individuals and collectives, through 'shifting the responsibility for social risks such as illness, unemployment, poverty, etc., and for life in society into the domain for which the individual is responsible and transforming it into a problem of "self-care" ' (Lemke, 2001, p. 201). Thereby, the state becomes a facilitating state that enables individuals to become responsible for managing their own needs and well-being, creating an 'entrepreneurial culture' and an 'active society' and particular subjectivities, such as the 'active or enterprising citizen' or 'informed consumers' (Dean, 1999, p. 33). Yet, at the same time, this deepening phase of neo-liberalism also 'empowers' new subjects, creates new weak spots and opens up spaces for resistance and counter-conduct.

Using a Foucauldian governmentality approach, this chapter analyses the underlying governing rationality and techniques associated with the 'discovery' of the diaspora as a civil society actor in the international arena. I argue that this international 'discovery' is indicative of a shift in the rationality for governing expatriate populations from 'developmentalist' towards neo-liberal diaspora governing, situated within recent 'roll-out' neo-liberalism. This 'neo-liberal diaspora governing' is based on governing at a distance and entails the governing *of* diasporas as objects, and the governing *through* and *with* diasporas as political subjects, as well as expatriate self-governing. The shift towards neo-liberal governmentality involves the responsibilization and disciplining of the diaspora, while at the same time opening space for resistance and empowerment. Thus, this 'discovery' of the diaspora as an international actor is not just a transfer of power from the state to an already existing civil society actor. Rather, neo-liberal diaspora governing actually creates new civil society actors, actively mobilizes them in various fields and ways, and transforms state-diaspora and more broadly state–civil society relations, redrawing public–private boundaries.

The chapter proceeds as follows: the next section analyses the ways in which the diaspora has become constituted as an actor in the international arena, situated within a shift towards neo-liberal diaspora governing. Section three examines how this shift towards neo-liberal diaspora governing plays out in the Mexican context and explores the forms of resistance and counter-conduct that have emerged. The pioneering role of state, non-state and international institutions in 'courting' the Mexican diaspora, and the international export of some Mexican-born diaspora policies, such as the *Programa* $3 \times 1$ (see below), make

the Mexican case a perfect illustration of the international 'discovery' of the 'diaspora' and the shift towards neo-liberal diaspora governing. I conclude with some reflections on the contributions of my analysis to the 'diffusion of power' debate. This chapter draws on policy document analysis and expert interviews with officials from Mexican government institutions and from international and non-governmental organizations, as well as fieldwork research in Mexico conducted between 2005 and 2008.

## The 'discovery' of the diaspora as an actor in the international arena

Expatriate populations and communities have existed for a long time and have organized and undertaken various activities throughout history. Yet, it is only recently that 'the diaspora' has become portrayed and promoted as an actor in the international arena, accompanied by a growing number of governmental, non-governmental and international organizations reaching out to expatriate communities, and an increased organization and institutionalization of expatriate activities. Why is this the case? The existing literature tends to locate this phenomenon in individual states' decisions to reach out to their expatriate populations, whereby diaspora policies are understood as an instrument of foreign policy or an extension of inter-state cooperation or rivalries. Critics have challenged this approach for its tendency to naturalize both 'the diaspora' and 'the state' (King and Melvin, 1999; Larner, 2007; Ragazzi, 2009). Thereby, the diaspora is conceptualized as an analytical category, a given entity or an individual actor that may influence, or benefit from interactions with, the state, which is equally seen as an entity. Yet, expatriate communities are composed of heterogeneous groups of people who do not *a priori* share common values and interests. Moreover, an approach that focuses on the national level is not helpful to understand the recent 'discovery' of the diaspora in the international arena.

Instead, governmentality scholars have suggested that we need to pay attention to the way in which the diaspora has been constituted as an actor in international affairs and has become a 'governmental category' (Larner, 2007, p. 333). This is not a process of simply mobilizing 'self-evident groups of people who have already organised themselves according to their countries of origin' (ibid., p. 334). Rather, referring to expatriate citizens in terms of 'the diaspora' is indicative of a new way of thinking about this population and represents an act of constituting

the subject of the diaspora in particular forms. This section analyses the ways in which the diaspora has become constituted as an actor in the international arena. The analysis identifies a broad shift over the last few decades from 'developmentalist' towards neo-liberal diaspora governing, within which the international 'discovery' is situated. Whereas a 'developmentalist' approach is based on the expansion of state power through direct control of expatriate populations, often using them as an instrument of foreign policy, neo-liberal diaspora governing draws on more indirect control and governing at a distance. However, it is important to note that this shift does not mean that these two modalities of diaspora governing are mutually exclusive; rather, these two different modalities of governing exist in parallel.

While diaspora policies have existed for a long time and have taken various forms, the post-war period saw a growing trend in many third world countries to establish formal relationships with their expatriate communities and to link them to economic development (ibid., p. 335). In this context, large guest worker programmes were established in Europe and the USA, such as the *Bracero* Programme between Mexico and the USA (see below). This trend was institutionalized at the international level through the prominent Transfer of Knowledge through Expatriate Nationals (TOKTEN) programme (ibid.).[6] TOKTEN was initiated by the United Nations Development Programme (UNDP) in 1977 in an effort to counter the effects of brain drain in developing countries. UNDP runs TOKTEN projects in over 30 countries, which cover the costs of experts who volunteer to temporarily return to their countries of origin in an attempt to transfer knowledge and skills for development. This early phase of diaspora governing in the international arena was marked by the notion of 'brain drain' whereby emigration was perceived in terms of a loss of human and social capital (Meyer, 2001; Larner, 2007). As the vast contributions of expatriates started to become visible – such as the Chinese, Korean and Taiwanese expatriate contributions to their countries' electronic industry – governments of origin established initiatives to develop 'technology partnerships' to capitalize on the links with their highly skilled expatriates (Larner, 2007, p. 335).

This early phase was based on a welfarist conception of aid and a developmentalist notion of international relationships occurring between nation states, whereby the 'recipient country compensated the donor country for the expertise they have taken away' (ibid., p. 335). Emigration was mainly understood as moving temporarily to another country with the aim of returning, and expatriates were perceived as supporting and enhancing the activities of their home governments.

Thereby, the diaspora was understood as an object of governing, whose behavioural patterns could be altered through the right incentives and guidance (Neumann and Sending, 2010, p. 116).

The 'discovery' of the diaspora as an actor in the international arena occurred in the 1980s and 1990s with a proliferation of activities by both state and non-state actors aimed at promoting the involvement of expatriate communities. This went hand in hand with the emergence of more positive terms denoting expatriates as 'heroes' such as in the Filipino and Mexican context.[7] In this context, an extensive machinery designed to collect data about expatriates and their activities has been established, and has produced a wealth of studies and surveys with information about emigrant's experiences, their living conditions in the countries of destination and their remitting and organizing activities. This information is distributed through national and international conferences, publications and expert meetings. Various actors – governmental, non-governmental and researchers – are involved in this information collection and distribution exercise (Kunz, 2011).

As a result, diasporas are increasingly seen as a governmental category, which translates into strategies to 'court' them. This strategy is generally defined as 'institutionalised national policies and programs that attempt to expand the scope of a national state's political, economic, social, and moral regulation to include emigrant and their descendants outside the national territory' (Guarnizo and Smith quoted in Goldring, 2002, p. 64). Courting can take various forms, such as acknowledging the efforts and achievements of expatriates in official statements and visits, establishing institutions and programmes to offer services to expatriates, passing laws permitting double nationality, offering co-funding and investment opportunities for expatriates, and involving them in policy-making. Thus, a number of countries of origin have implemented legislative changes that increase emigrants' rights, such as double nationality or the opportunity to vote from abroad, and established institutions destined to communicate with, and offer services to, expatriates, such as the Ministry of Diaspora in Serbia or Armenia, the *Instituto de los Mexicanos en el Exterior* or the Commission on Filippinos Overseas (Ragazzi, 2009, p. 390). Yet, with the international 'discovery' of the diaspora, the courting strategy has extended beyond institutionalized policies at the national level. Indeed, various international governmental, non-governmental and private institutions, such as the World Bank, Regional Development Banks, the International Organization for Migration (IOM), the International Labour Organization (ILO), and the Rockefeller and Ford Foundations, increasingly reach out to

expatriate populations to involve them in activities, such as development or conflict resolution (Kunz, 2011). This was supported by the Global Commission on International Migration (GCIM) as indicated in its final report: 'Diasporas should be encouraged to promote development by saving and investing in their countries of origin and participating in transnational knowledge networks' (GCIM, 2005, p. 23). In this context, the World Bank launched the African Diaspora Programme (ADP) in September 2007 aiming to 'enable and enhance the human and financial capital contributions of African Diasporas to the economic development of their home countries', through 'a portfolio of activities and support in partnership with the African Union (AU), partner countries, partner donors, and African Diaspora Professional Networks and Hometown Associations'.[8]

This recent phase of diaspora governing in the international arena marks a shift towards a neo-liberal rationality of governing that works through governing at a distance. Thereby, expatriates are now understood as mobile populations building 'global networks', rather than objects of bilateral initiatives between nation-states (Larner, 2007, p. 336). Expatriates are assumed and even encouraged to have multiple attachments, circulating between countries of origin and destination, captured by the notions of brain gain or brain circulation. This entails a remapping of the boundaries of belonging and creates new hierarchies of inclusion and exclusion independent of territorial considerations (Ragazzi, 2009, p. 389). Compared to the early phase illustrated with the TOKTEN programme, we now see a much more active mobilization of expatriates through formal initiatives, the creation of expert databases, and the explicit targeting of expatriates in the name of international connectedness, entrepreneurship and innovation. This phase is based on a new governing logic that involves 'a new geographic imaginary and political-economy field' as well as the 'active constitution of new spaces and subjects' (Larner, 2007, p. 332). Expatriates are understood as 'development actors' and as experts with valuable local knowledge to be mobilized. Thus, the diaspora is seen as both an object of knowledge and government in the international arena, as well as a subject of governing.

This short overview shows how the constitution of the subject of the diaspora as a civil society actor in the international arena is linked to the shift from 'developmentalist' towards neo-liberal diaspora governing, whereby state and non-state actors have come to realize the importance of expatriates and seek to mobilize them through governing at a distance. Yet, as I mentioned, this does not mean that previous

'developmentalist' rationalities are no longer deployed; rather, they coexist with neo-liberal rationalities.

## Neo-liberal diaspora governing in the Mexican case

This section examines how the international 'discovery' of the diaspora plays out in the Mexican context and explores the shift in the 1980s towards neo-liberal diaspora governing. The analysis first traces the emergence of neo-liberal diaspora governing in the context of Mexico. In a second step, I focus on the ways in which neo-liberal diaspora governing works through governing at a distance, before exploring the spaces of empowerment and resistance that have been created through neo-liberal diaspora governing in a third step.

### From pochos to heroes: Towards neo-liberal diaspora governing

Traditionally, since the late-19th century until the 1940s, Mexico practiced a policy of attracting home its expatriates who had remained in the territories 'annexed' by the USA (California, Texas, New Mexico, Arizona, Nevada and Utah) after the end of the Mexican–American War in 1848, and welcomed back those affected by the US mass expulsions of migrants during the economic crises of 1907, 1921, 1929 and 1939 (Durand, March 2004). During the Mexican Revolution in 1910, a wave of refugees joined the migration flows and the entry of the USA into the First World War increased the demand for Mexican workers, which decreased during the Great Depression. This period was mainly characterized by the private recruitment of Mexican labourers through USA recruiting agencies. During this period, Mexican migrants were generally portrayed as traitors to the homeland, lacking patriotism because they were working for, and thus contributing to, the development and enrichment of the neighbouring enemy. Migration was seen as a sin or illness, as Fabila stated in 1932: 'Migrants are ill with the sin of emigration'[9] (Alfonso Fabila, 1932 quoted in Durand, 2005, p. 18). The exploitation of Mexicans in the USA was seen as an offence to national pride in Mexico. Return migrants were viewed with suspicion, marginalized in Mexican life and treated as outsiders. They were called *pochos*, a derogatory term referring to the fact that they had acquired a new accent and were using anglicisms (Gómez Arnau and Trigueros, no date, p. 287). This was accompanied by a definition of the nation in territorial terms, based on a welfarist approach emphasizing the developmental state. Accordingly, governmental techniques were based on a policy of dissuasion that aimed at discouraging emigrants from answering the

calls of US labour recruiters (Durand, March 2004). Mexico saw itself as a 'nation of immeasurable riches where progress required the entire population', and whose weak demographic situation[10] meant it could not afford to lose a part of its population (ibid.).

In the 1940s, the Mexican population had grown and the USA was looking abroad for recruits to support its wartime economy (ibid.). The Mexican government realized that it could not prevent emigration and over time, it also came to see emigration as 'a safety valve to unemployment or political pressures' (Délano, 2009, p. 765). In 1942, the famous *Bracero* programme was established (1942–1964), a bilateral temporary migrant worker agreement. This programme was administered by the two governments and restricted to male agricultural workers, who were provided with temporary work contracts guaranteeing a minimum wage, transport and social security (Durand, 2005, p. 19). During its existence, 4.5 million *braceros* were recruited (ibid., p. 19).

During these periods, the governing of expatriate populations was based on a 'developmentalist' understanding that perceived Mexican expatriates as objects to be governed through direct control. Emigration was either seen as an illness or an abnormal behavioural pattern that needed to be altered through adequate state policies. Later, the *braceros* were understood as objects to be governed by a temporary labour agreement, seen through welfarist lenses whereby expatriates were perceived as supporting and enhancing the activities of governments and understood in terms of an instrument of foreign policy.

Yet, around the 1980s a shift in the rationality of governing expatriate populations occurred, culminating during the *sexenio* of Vicente Fox. This shift entailed a number of conceptual elements as well as new governing techniques. A first conceptual shift involved the reframing of migration from a problem to an opportunity, as President Fox affirmed in 2001: 'Migration is not a problem, it's an opportunity for both countries, in order to turn the future to our favour'[11] (Fox, 13 November 2001). Second, there was a shift in the representation of Mexican migrants from *pochos* to heroes. Thus, President Fox referred to Mexican migrant workers as the '23 million beloved Mexican heroes, 23 million Mexicans living and working in the US'[12] (Fox, 13 November 2001). This opened the door for the creation of new subjectivities, such as the migrant entrepreneur and the migrant agent for development (see below). Hand in hand with this second conceptual shift went a redefinition of the Mexican nation to transcend territorial confines in order to include Mexicans living abroad, which started at the beginning of the 1990s (Goldring, 2002, p. 56). President Fox famously prided himself to

be the first president 'to govern for 118 million Mexicans',[13] including 100 million in Mexico and 18 million living abroad (Fox, 13 November 2001).

These conceptual shifts paved the way for the creation of the diaspora as a population group and a governmental category, and the emergence of a neo-liberal government rationality based on governing at a distance. The new understanding of expatriates as heroes, development agents and entrepreneurs – detached from their previously exclusive attachment to the Mexican nation-state – opens space for the involvement of international and non-state actors in diaspora governing. Thus, neo-liberal diaspora governing involves a variety of actors that use particular governing techniques, such as the extensive collection and distribution of particular knowledge about expatriate populations; an extensive 'courting the diaspora strategy'; and the increased institutionalization of expatriate activities. Through this neo-liberal form of diaspora governing, the Mexican diaspora has been created as an international object of knowledge and government as well as an active subject involved in governing. The following sections reveal how this form of governing diasporas at a distance works in two main ways: through calling upon expatriates as experts and through expatriate self-governing.

**Governing through expatriates as experts**

Traditionally, given their reputation as traitors to the Mexican nation, expatriates did not have much visibility, and little was known about them. Yet, the international 'discovery' of the diaspora and its constitution as a governmental category has gone hand in hand with a wealth of studies, surveys and statistics regarding emigrants' lives, their ways of crossing borders and their activities, particularly focusing on remittances and investment. This information is distributed through national and international conferences, publications and expert meetings. In the Mexican case, various actors are involved in this information collection and distribution exercise, such as Mexican universities, Mexican government institutions, Mexican and US banks, NGOs (such as the Inter-American Foundation) and international financial institutions. Thus, for example, the Multilateral Investment Fund of the Inter-American Development Bank commissioned a major survey about the remittance behaviour of Latino immigrants in the USA (Multilateral Investment Fund, 2002). The increasing institutionalization of expatriate organizations, the registration procedure established by the Mexican government through its consulates, and the introduction of the *Matrícula Consular*[14] have also facilitated the collection of

information about expatriates (Kunz, 2011). This information collection and distribution contributes to keep track of expatriates and renders them visible, and also serves as a basis for designing policies aimed at linking remittances and migration to development in Mexico. Thereby, the diaspora is turned into an object of knowledge and governing.

Yet, at the same time, these initiatives also contribute to turn the diaspora into an active political subject. This is achieved mainly through an explicit 'courting' strategy, which is a key ingredient of neo-liberal diaspora governing as seen in the previous section. In the Mexican case, the first major courting initiative started at state-level in 1986 when, during a visit to Los Angeles, the governor of Zacatecas announced the *Programa para los Zacatecanos Ausentes* (Programme for Zacatecans Abroad), in which the state government matched every peso that the Federation of Zacatecan Clubs of Southern California invested in local projects (Burgess, 2005, p. 112). Zacatecan migrants had long been active in organizing and collecting money for projects destined to improve life in their home communities. However, this was the first major step by a governor to formalize such initiatives and actively get in touch with the expatriate population in the USA to involve them as experts in the development of their home communities. This Zacatecan programme later became the model for the federal *Programa* $3 \times 1$.

At the federal level, the courting strategy emerged under the Salinas administration (1988–1994) and culminated during the Fox presidency (2000–2006). Under Salinas, a set of policies and programmes were established to promote closer social, cultural and economic ties with Mexicans abroad and to offer services to expatriates (Goldring, 2002, p. 66). In 1989, Salinas created the *Programa Paisano* that aimed to improve the treatment of returning Mexicans at the hands of customs and police agents (ibid.). In 1990, the *Programa para las Comunidades Mexicanas en el Exterior* (PCME) was established, aimed at redefining the relationship with Mexicans abroad (Gómez Arnau and Trigueros, no date, p. 283). The PCME included a network of 42 consulates and 24 institutes and cultural centres, providing services in various areas such as education, culture, sports, business, health and communication (Goldring, 2002, p. 66).

In 2002, the PCME was replaced by the *Instituto de los Mexicanos en el Exterior* (IME), with the aim of strengthening the institutional capacity of the Mexican 'courting' strategy.[15] The IME offers services to expatriates in the same areas as the PCME. An important part of its activity is to distribute information about its programmes and to get the Mexican expatriate population involved in development initiatives.

This is achieved through the regularly organized *Jornadas Informativas* (Information Days) for influential leaders of Mexican expatriate communities in the USA and Canada.[16] During these *Jornadas*, migrant leaders are informed about IME services and options for expatriates wishing to donate money or invest in Mexico. The IME reaches out to expatriates through cooperation with the Mexican consulates in the USA and Canada. The consulates are in direct contact with the migrants and identify the community leaders to be invited to the *Jornadas* (Personal interview with IME official, Mexico City, 2005). These *Jornadas* serve to collect information about expatriates, but also to create or confirm migrant leaders, and to spread certain norms regarding desirable expatriate behaviour, encouraging them to organize, send remittances and invest productively. Thereby, expatriates are invited as experts with local knowledge to promote trade and tourism, but also for their potential to govern at a distance in spreading IME norms and initiating development and investment projects.

Another governing technique of the IME is the *Consejo Consultivo*, an advisory council that consists of 152 members, including migrant representatives, representatives from Latino organizations in the USA, special advisors and representatives from Mexico's state governments.[17] The mission of this advisory council is to identify and analyse challenges and opportunities regarding the improvement of the lives of Mexicans abroad, and to assist the IME in the promotion of its programmes. This serves to collect information about expatriates, turning them into an object of knowledge, but also to draw on expatriates' human, social and financial resources. At the same time, it draws on expatriates as expert subjects to cooperate with the IME, mobilizing their potential to govern at a distance. More broadly, such initiatives act to challenge traditional public–private boundaries.

For a long time, courting mainly involved Mexican government agencies at the federal, state, municipal and community level and Mexican financial institutions. Yet, with the international 'discovery' of diasporas, new actors have become involved in courting strategies, such as US and international financial institutions (e.g. US banks or Western Union); US NGOs and philanthropic organizations (e.g. the Inter-American Foundation, or the Rockefeller and Ford foundations); USAID; and regional and international organizations such as the Inter-American Development Bank (IDB) and the ILO (Kunz, 2011, p. 97).

Thus, courting initiatives such as the *Jornadas Informativas* and the *Consejo Consultivo* are examples of governing techniques that appeal in various ways to expatriates as experts with valuable knowledge regarding

the needs of their home community and the lives and activities of expatriates. Thereby, they get involved as active subjects in governing at a distance: they contribute to spread particular norms regarding 'desirable' expatriate behaviour; they initiate development and investment projects based on the logic of their responsibility to contribute to the well-being of their families and home communities; and they participate in decision-making regarding development and investment priorities. This involves governing at a spatial and constitutional distance through linking expatriates as experts in distant sites to the calculations of the IME and other actors involved in courting the diaspora – as well as through the decisions and initiatives taken by 'non-political modes of authority' (Rose, 1999, p. 49–50).

Governing at a distance fosters individual and collective responsibilities, and the diaspora becomes responsibilized to various tasks, such as the provision of welfare and development. This is based on and reinforces a neo-liberal understanding of welfare based on the responsibilization of individuals and groups for their own well-being, whereby migrants' individual remittances allow families to pay for consumption as well as welfare services such as education and healthcare; collective remittances serve to fund development projects for the community. The analysis also highlights how, within this neo-liberal diaspora, governing 'the state' and 'the diaspora' do not necessarily stand in opposition and traditional public-private divides are challenged.

**Governing through expatriate self-governing**

Neo-liberal diaspora governing at a distance also works through expatriate self-governing. The courting strategy discussed above establishes norms and hierarchies among emigrants and emigrant groups, which serve to create peer pressure to conform to these norms in order to obtain funding and political capital. Thus, for example, the courting strategy involves encouraging expatriates to organize and to institutionalize their associations into Home Town Associations (HTAs) and Federations grouping all HTAs in a specific US state. As a consequence of the active promotion of HTAs throughout the 1990s, their number increased dramatically and they increasingly federated, illustrating the self-governing of Mexican expatriates. This has a contradictory outcome: while it is in some sense an achievement of the objective to get migrants organized, in order to pool and strengthen their political and economic resources to be tapped by state and non-state institutions, it has at the same time given migrant organizations more bargaining leverage and a stronger footing in the interaction with the Mexican

government (see below) (Burgess, 2005, p. 113; Goldring, 2002, p. 63). This highlights how the relations between the Mexican state and its expatriate population have been transformed within this new form of diaspora governing.

Another element of the courting strategy that works through expatriate self-governing is the *Programa* 3 × 1. This programme works as a matching-funds system, whereby HTAs donate money and apply for additional funding from the three levels of the Mexican government to finance a development project in their community of origin.[18] Three types of projects can be funded through the 3 × 1 programme: infrastructure projects, such as church renovation, the construction of roads, wells or schools; socio-cultural projects, including the funding of community fiestas, community centres or scholarships; and so-called productive projects,[19] which are economic development projects, such as animal breeding or greenhouses (García Zamora, 2003). The programme experienced exponential growth[20] and has been hailed as an example of best practice and promoted in other countries, such as El Salvador (Fernández de Castro et al., 2006, p. 5). However, commentators have warned about unwanted effects of such programmes, and voiced doubts regarding their replicability in other places. As a result of critiques and the recent economic crisis, the programme's popularity has somewhat declined. Through initiatives such as the *Programa* 3 × 1, expatriates who organize and send remittances are rewarded with recognition, political influence and funding. Successful HTAs receive visits by Mexican governors or even the Mexican president. The more organized they are and the more remittances they send, the bigger the reward. Expatriates who are not organized and institutionalized are excluded from the programme and do not have access to co-funding. As a result, expatriates come to govern themselves to conform to these norms, while also spreading them through their activities.

The increasing involvement of international governmental and non-governmental institutions in courting has resulted in similar initiatives. Thus, for example, the *Fundación Solidaridad Mexicano-Americana A.C.*[21] and the *Fundación para la Productividad en el Campo, A.C.* (FPPC) have collaborated with migrant organizations in the US to promote development in their home communities. The Inter-American Foundation (IAF), an agency funded by the US government, provides grants to non-governmental and community-based organizations in the Latin American region for innovative, sustainable and self-help programmes and co-supports development projects financed by Mexican migrants (Merz and Chen, 2005, p. 222).[22] With its support in 2003 to the

Zacatecan Federation based in Los Angeles, Rockefeller became the first private foundation to make a grant to a migrant organization (ibid., p. 223). US Banks also partner with HTAs when it comes to promoting the use of formal remittance transfer mechanisms and providing financial services. The *Programa* 3 × 1 has been turned into the 4 × 1 and 5 × 1 to include business partners such as Western Union, forming public-private partnerships (Secretaria de Desarrollo Social [SEDESOL], 2008, p. 5).[23] In 2008, SEDESOL set up a pilot project in cooperation with the Inter-American Development Bank: the *Projecto Piloto* 3 × 1 *BID*.[24] The US government participates in the courting strategy, for example, by establishing partnerships with Mexican HTAs through USAID. Local priests in Mexico have also started to engage in the courting strategy, organizing the communities of origin and the expatriate communities, and building trust between the two groups in order to harness the potential contributions of emigrants to the development of the community and the church. One of the most prominent examples of a catholic priest involved in promoting migration-linked development initiatives is Padre Marco Linares in the community of Atacheo in Michoacán (Hernández-Coss, 2005).

A number of initiatives to promote the investment of remittances into (small) businesses in Mexico have also been established, such as the programme *Invierte en México*. Launched in 2003 by *Nacional Financiera* in cooperation with the Inter-American Development Bank, the objective of this programme is to contribute to the development of the communities of origin by creating employment and economic growth. Participation is limited to Mexican migrants with capital and an 'entrepreneurial spirit'. This programme acts to normalize expatriate behaviour and to produce an entrepreneurial culture among migrants and the subject of the 'entrepreneurial migrant'. This creation of the subject of the entrepreneurial migrant is situated in the context outlined above: the shift towards representing migrants as heroes and agents for development, and explicit targeting with courting initiatives. Interestingly, in the Mexican context, the entrepreneurial migrant subject is usually assumed to be male, based on a gendered dichotomy that opposes the male entrepreneurial migrant hero to the passive female remittance-receiver.[25]

Thus, neo-liberal diaspora governing works through self-governing whereby expatriates come to conform to the norms of sending individual remittances to their families and collective remittances to their communities, establishing businesses in Mexico, organizing and initiating development projects. Yet, as the next section shows, through their

involvement in 3 × 1 projects, for example, migrants may also gain 'empowerment' in the form of an improved status, increased recognition and negotiating power with the Mexican government and political influence in their home communities.

**Empowerment and resistance**

Each government rationality goes hand in hand with specific forms of resistance, as Foucault famously suggested: 'where there is power, there is resistance' (Foucault, 1978, p. 95–96). Thus, the creation of the diaspora as an international actor and the governing at a distance through and with expatriates also creates space for empowerment, allowing them to obtain political leverage and negotiating power, and opens space for resistance and counter-conduct.

The neo-liberal diaspora governing rationality outlined in the previous sections has met with various forms of collective and individual resistance, which are highly context-specific. In the case of Mexio, for example, some expatriates have refused to participate in the *Consejo Consultivo*, resisting efforts to turn them into development experts (Personal interview with IME official, Mexico City, 2005). They also challenge the *Consejo* for being non-representative and non-democratic, and for creating exclusion and divisions among expatriates, which can be interpreted as a challenge to efforts to govern at constitutional distance.

Migrants from the state of Tlaxcala have resisted the pressure to get organized and send collective remittances (Marchand et al., 2006, p. 69; Revilla López, 2005, p. 72). In an explicit refusal to become 'agents for development' and to trust government authorities and cooperate with them, migrants from Tlaxcala have been reluctant to send collective remittances, to get organized in HTAs and to participate in migration-linked development initiatives such as the *Programa* 3 × 1, despite numerous efforts by governmental and non-governmental actors to 'court' them. Individual migrants I interviewed in a rural community in the state of Tlaxcala also took such an attitude and refused to send collective remittances or organized in the extended family to avoid cooperation with state authorities (Personal interview, Los Pilares, 2006). Thus, expatriates individually and collectively resist the pressure to be instrumentalized as development experts and to become self-governing and responsibilized for the welfare of their communities.

Expatriate groups from the state of Puebla have engaged in another strategy of resistance. They have openly blamed political authorities and the PRI (*Partido Revolucionario Institucional*) as partly responsible for creating a situation that forced them to emigrate to the USA to

find a better life, and therefore said that they had little interest in cooperating with state authorities. They chose not to participate in the $3 \times 1$ programme and to channel their remittances in alternative ways. Research has shown that the general politicization of this programme has prompted resistance by a number of migrant groups who oppose corruption and resist attempts by local politicians to claim credit for getting the migrants to send collective remittances (Rocha Menocal, no date, p. 6). The case of the emigrants from Puebla shows how expatriates resist the responsibilization pressure and use their strengthened voice to express their discontent with the political situation in their home state. Thus, migrants can become empowered through the increased leverage gained through this neo-liberal form of diaspora governing.

Mexican expatriate organizations have also used their increased visibility and expert status to express their needs and concerns and start making demands on home governments. For instance, they take advantage of their attributed status as development experts and use their strengthened authority in negotiations with Mexican government institutions, in order to push through their specific needs. Burgess documents how migrant organizations have resisted attempts by the Mexican municipal or state governments to outsource their responsibility in terms of infrastructure development, and how they have started to demand transparency, accountability and the fighting of corruption (Burgess, 2005, p. 116, 122). In her study of migrant organizations from Zacatecas, Jalisco and Michoacán, she observed:

> (H)TA members have expressed concerns over the new role given to municipal governments. First, they are wary of absolving local authorities of the responsibility for providing basic services. Second, they resist efforts to shift control of project resources and implementation to the municipality. (...) Some HTAs also protested the frequent, ad hoc, use of state government funds to cover shortfalls in the municipalities' contributions to the program.
>
> (Burgess, 2005, p. 116)

This illustrates how expatriates have collectively started to use the leverage gained through organizing, enhanced through the courting strategy, to take advantage of their new subject status. Hence, in some cases, instead of becoming partners in neo-liberal governing at a distance, they have gained increasing awareness of their rights, raised demands and strengthened their political voice.

## Conclusion

I have argued that the recent international 'discovery' of the diaspora and its promotion as an increasingly important civil society actor in the international arena needs to be situated within the 'diffusion of power' debate regarding broader transformations of governance and power in late modern society. Using a governmentality framework, the analysis demonstrates that this international 'discovery' is part of a larger transformation of state–civil society relations within roll-out neo-liberalism, whereby civil society actors have become both objects and subjects of governing. Through new forms of governing at a distance, neo-liberal diaspora governing creates new civil society actors, actively mobilizes them in various fields and ways, and transforms state-diaspora and more broadly state–civil society relations, redrawing public–private boundaries.

What can this analysis of the international 'discovery of the diaspora' contribute to the 'diffusion of power' debate? The analysis shows that the key question of this debate (see Introduction) – whether power has been diffused in world politics – cannot be answered with a simple yes or no. Rather, my analysis challenges the question itself. It highlights that (in this particular case), we are not dealing with a diffusion of power from the state towards a pre-existing civil society actor, but with a situation where a new actor, new modes of governance and new forms of power have emerged in a process that is commonly referred to as the 'diffusion of power'. Thereby, the concept of governing at a distance proves helpful to understand a key mechanism of the phenomenon described by the 'diffusion of power' debate.

Regarding the four problematiques of governance outlined in the Introduction, the analysis in this chapter has mainly focused on the question of how governing works. I have shown how diaspora governing at a distance has become a prominent mechanism within roll-out neo-liberalism, which works through governing expatriates as experts and through expatriate self-governing. Yet, the analysis also provides some insights into the question of 'who governs?': the agency dimension. Indeed, the 'how?' and the 'who?' questions are closely linked. As illustrated, neo-liberal diaspora governing is characterized by the involvement of various state, non-state and international institutions; and expatriates themselves have also become involved in governing and self-governing. Yet, rather than arguing that the state loses authority, based on a zero-sum conception of power, the analysis shows that this form of governing actually creates new actors (e.g. the diaspora)

and new forms of power and authority, challenging established public-private boundaries and redefining state–civil society relations. Regarding the third problematique, namely the scope of governance, the analysis highlights that governing at a distance allows for a reaching down to the individual subject in the form of disciplining and self-governing, an element often neglected in the 'diffusion of power' debate. Thereby, new individual subjectivities are created, such as the migrant entrepreneur. Finally, in terms of the normative content of order, the governmentality analysis allows for the revelation of instances of governing at constitutional distance: non-political modes of authority. My analysis suggests that the often-welcomed cooperation between governmental and non-governmental institutions and expatriate organizations is a complex issue that goes both ways, to empower diasporas, as well as to co-opt them. Moreover, it challenges the simplistic call for more participation of expatriate experts by questioning the terms of participation as well as the problematic implications it might have, for example in terms of reducing the participation of the non-migrant population in communities of origin. Indeed, it has been shown in the literature and confirmed by my own fieldwork in Mexico that the increasing expert status and decision-making power given to diasporas has led to the marginalization or exclusion of other parts of civil society, such as the communities of origin. Through governing at constitutional distance, decision-making regarding development priorities is shifted into the hands of expatriate development experts. Their opinion and participation is privileged over that of the non-migrant population, resulting in complex inclusion/exclusion and stratification processes within civil society (Kunz, 2011).

Finally, what are the broader implications of the neo-liberal diaspora governing analysed in this chapter? The increasing role played by expatriates has contradictory implications, based on a fundamental paradox of neo-liberalism. On the one hand, they become the objects of governing and targets of specific governmental and non-governmental courting initiatives. On the other hand, their involvement turns expatriates into subjects of governing and conveys to them certain participation and decision-making power. However, this involvement has a 'price-tag' (Lemke, 2001, p. 202): expatriates have to assume responsibility for their activities and become co-responsible for development in their home country. This can be seen, for example, in the fact that community members in Mexico have started to turn towards expatriates from the community for help, instead of addressing their demands to the Mexican government. The result is a certain de-responsibilization of

the state in terms of welfare provision. The responsibility for mitigating the consequences of neo-liberal policies – such as privatization, cuts in social spending and export-oriented development – is delegated to civil society actors and the individual citizen. Thereby, the boundaries between the public and the private are redrawn and these very notions redefined.

## Notes

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2. http://www.diaspeace.org/
3. The terms 'private actors', 'non-state actors' and 'civil society' are used as catch-all terms for a plethora of actors involved in world politics, there is disagreement on the exact meaning of these terms and various categorization attempts exist, see: Arts, Noortmann and Reinalda (eds), 2001 or Colàs, 2001.
4. Important exceptions include: Adamson and Demetriou (2007), Larner (2007), Ragazzi (2009) [and Shain (1989)].
5. The concept of governing at a distance was coined by Miller and Rose (1990), building on the work of Michel Callon and Bruno Latour.
6. See: http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=26
7. Yet, with the securitization of migration after 9/11, this representation has been challenged and in some contexts the framing has shifted towards representing migrants as 'terrorists'.
8. See: http://siteresources.worldbank.org/INTDIASPORA/Resources/African_Diaspora_Program-About_the_program.pdf
9. Translation by the author.
10. At the turn of the 20th century, Mexico's population was around 13.6 million (Durand, March 2004).
11. Translation by the author.
12. Ibid.
13. Ibid.
14. The *Matrícula Consular* is an identity card for Mexican migrants living in the USA. It is a useful instrument for migrants for identification, independent of their legal status, and to obtain all sorts of services, open bank accounts and make remittance transfers.

15. See: http://www.ime.gob.mx/ime/antecedentes.htm
16. See: http://www.ime.gob.mx/jornadas/jornadas.htm
17. See www.ime.gob.mx/ccime/ccime.htm
18. See: http://www.microrregiones.gob.mx/3 × 1/
19. The recent move to include productive projects into the 3 × 1 programme has sparked a number of controversies. For a detailed analysis, see: García Zamora (2003).
20. In 2002, only 20 HTAs participated in the programme; by the end of 2007, the number had grown to 857 HTAs, and the number of projects funded by the programme and the sums of collective remittances channelled through the programme had increased substantively (SEDESOL, 2008).
21. The *Fundación Solidaridad Mexicano-Americana A.C.* is a binational non-profit organization that works to promote cultural, social, educational and entrepreneurial exchange between the two countries. It works to build new leaders among the migrants with a view to encouraging them to invest in their home country.
22. See: http://www.iaf.gov/
23. The pioneer project was signed on 12 October 2005, involving First Data Corporation and its subsidiary Western Union as the first corporate entity to collaborate in the matching-fund programme with a contribution of US$1.25 million, of which $250,000 is earmarked for projects in Zacatecas. See: http://www.federacionzacatecana.org/index.php?sectionName= home&subSection= news&story_id= 292
24. See: http://www.microrregiones.gob.mx/3 × 1/nota2.html and http://www.sedesol.gob.mx/index/index.php?sec= 3001&len= 1
25. These gender dimensions are strongly context-specific. For a more detailed analysis of the gendered dimensions of diaspora governing in the case of Mexico, see Kunz (2008, 2010).

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# 9

# Patterns of Global Governmentality and Sovereignty

*Tanja E. Aalberts*

This volume on the *Diffusion of Power* engages in the debate on changing structures of global governance by exploring different ways to redefine concepts and the analysis of power and governance. Whereas governance is usually referred to as an indication of the reduction of the role of sovereign states, where the 'Westphalian model' has become outmoded or even redundant, this chapter takes a different perspective by investigating what these developments mean for our understanding of yet another key (and contested) concept of International Relations (IR): state sovereignty. More specifically, it elaborates how governance works through sovereignty. By this it does not mean the continued importance of states among the plurality of actors within governance structures, but rather how sovereign statehood itself is the outcome of a particular regime of knowledge that projects sovereign states as objects of regulation and government.

In this regard the current analysis can be conceived as relatively classical insofar as it relates governance to the familiar statist organization of power and authority. However, at the same time it sets out to unravel assumptions of traditional analyses that take sovereign statehood to be a particular given 'thing' or empirical fact of international politics since the 17th century. In line with constructivist insights in IR, sovereignty rather is conceived as an institutional fact (see e.g. Biersteker and Weber, 1996; Werner and De Wilde, 2001). Following the linguistic turn (see Débrix, 2003; Bartelson, 2008), this also means that while scrutinizing a key concept, the current argument does not aim to refine our political concepts as universal and neutral concepts through empirical fine-tuning. Rather than specifying sovereignty by tracing the lowest common denominator(s) as its core essence, concepts are seen to be interwoven with the language that produces them. This means that the meaning of concepts is not given in empirical reality out there,

but the outcome of practices or usage (Wittgenstein, 1958). In light of this discussion, statism also connotes a more fundamental ontological standpoint, namely, treating states as if they are given facts of nature.

In other words, the current analysis is statist in its research focus, but not in its meta-theoretical assumptions. Moreover, it takes a non-traditional view on state power, by analysing sovereign states not just as the locus of power (as the agents, or 'orderers'), but also as the outcomes of international governance themselves. In this context it moves beyond both the purely government-centred approaches and the constructivist literature with its focus on sovereignty as a practice of norms, by drawing upon a Foucaultian analysis of governmentality as a useful framework for analysing the workings of the institution of sovereignty within the international realm. As such, both sovereignty and governance are reconceptualized through a Foucaultian analysis of governmentality as (productive) power. Contrary to the familiar framing of governance as an alternative to and replacement of (sovereign) government – that is, 'governance without government'(Rosenau and Czempiel, 1992) – it will then be argued that sovereignty itself must be understood as a form of social rule and an object of political ordering. This also enables a move beyond the deadlock debate of sovereignty as something to remain forever or about to disappear, towards a more dynamic understanding of the institution of sovereignty as a particular mode of governance that is transformed or reconstituted within changing circumstances. The diffusion of power in the emerging governance structures then entails not so much a dilution of sovereignty as its reconfiguration within the international political order.

## From sovereignty to governance

When looking for a definition of sovereignty, most IR literature one way or the other refers to Hinsley's authoritative description of its dual dimensionality. Internally, sovereignty connotes supreme authority over a population inhabiting a territory. Externally, it connotes the lack of overarching authority structures in IR:

> These two assertions [of internal and external sovereignty] are complementary. They are the inward and outward expressions, the obverse and reverse sides of the same idea [being] the idea that there is a final and absolute political authority in the political community . . . and no final and absolute authority exists elsewhere.
>
> (Hinsley, 1986, pp. 158, 26, emphasis omitted)[1]

Sovereignty, then, means both power and authority, inside, and its negation, outside. This dual dimensionality of sovereignty is reflected in the conventional bifurcation in IR theory of understanding domestic politics along hierarchical, and international relations along anarchical lines. In traditional neo-realist IR theory this connotes to, respectively, Janus' beautiful side (order) and his ugly face when he turns his head to the outside (anarchy, 'law of the jungle', see Waltz, 1979).[2] This neo-realist logic of anarchy has been qualified by a variety of theoretical approaches, such as the English School and constructivism, that further elaborate sovereignty by emphasizing its social or intersubjective disposition and linking it to combined notions of freedom, autonomy, authority, rights and recognition.

Whereas this constructivist intervention has led to a richer understanding of international politics, at the same time this broader perspective means that the one abstract concept ('sovereignty') is filled with a number of other, equally abstract, concepts that somehow relate to sovereignty, yet do not cover it completely. Sovereignty, to paraphrase Huysmans, 'refers also to a wider framework of meaning (call it symbolic order, or culture or . . . discursive formation) within which we organize particular forms of life' (Huysmans, 1998, p. 228). This means, he continues, that concepts such as security (or power, Guzzini (2005), or sovereignty) require a broader analysis of the social frameworks in which they receive their meaning, and which in turn are reconstituted by the very labels of security, power or sovereignty, themselves. This consecutively means that rather than conceiving of such issues as a matter of definition, or as independent concepts that can be discovered in and pasted to reality out there, they should be appreciated as 'thick signifiers' (Huysmans, 1998). Such an interpretation or framing hence entails a crucial shift in our understanding of the relationship between empirical reality and the language in which we communicate about it (word/world relationship).

This is indeed the central message of the linguistic turn: Contrary to traditional conceptual analyses, let alone attempts to universal definitions, it argues that language is not a neutral means to convey messages from empirical reality, a label we attach to objective things (a so-called correspondence notion of language); rather language is part and parcel of shaping and producing the 'world' by giving it particular meaning (signification).[3] Moving beyond a definitional focus on what sovereignty *is*, to what it *does*, this article argues that sovereignty can be conceived as a thick signifier, as part of a speech act that constructs a particular world – an international society of states. To be more

specific, it creates both the society *and* its members as sovereigns. This is what the 'thickness' of signifiers refers to: their productive or constitutive quality within the context of a particular language game. Thus, as a thick signifier, sovereignty (to paraphrase Huysmans once more) articulates a particular way of organizing forms of life (Huysmans, 1998, p. 231). However, the reference to signifiers' thickness could easily be mistaken to refer to their essential or hard conceptual core – that is, the elements that are shared across different theoretical conceptualizations or empirical manifestations of sovereignty. When taking the word/world connection as constituted within particular language games seriously, there is no such essence to institutional facts like sovereignty. Whereas it might be objected that sovereign statehood at least entails a territory, population and government, these concepts in turn only gain meaning within the sovereignty game that constitutes them.

According to the disciplinary chronicles of IR and International Law, this sovereignty game originates in Westphalia (Gross, 1948). The 1648 Peace of Westphalia is usually indicated as the cradle of the system of sovereign states, by consolidating the *cuius regio, eius religio* principle that was introduced to no avail a century before with the Treaty of Augsburg (1555). Westphalia in this context signifies the watershed between the feudal political order with overlapping jurisdictions, concentric circles of power, and the imperial rule of Pope and Emperor in the *Respublica Christiana,* to a territorial demarcation of exclusive authority within a society of equal sovereigns. The historical accuracy of this narrative has been widely criticized,[4] and the origin of Westphalia has finally been replaced by its myth. Nevertheless, 'the Peace of Westphalia may be said to continue its sway over political man's mind as the *ratio scripta* that it was held to be of yore' (Gross, 1948, p. 21). Accepting Westphalia as a convenient if symbolic shorthand for the cradle of the international society of sovereign states, the focus is here on what it came to signify as part of the disciplinary readings of sovereignty within IR. Crucial is the distinction between inside and outside, on which sovereignty seems to balance:

> Sovereignty is ontologically disconnected from the spheres it constitutes as separate, but it also serves as the crucial link between them: without 'external' sovereignty, no 'internal' sovereignty, and conversely . . . [Sovereignty constitutes the domestic and the international] as separate by their interdependence, and interdependent only by virtue of their separation.
>
> (Bartelson, 1995, p. 47)

Sovereignty hence is what connects the international arena to the domestic, as well as the defining link between the whole (system) and the parts (states), which are composed of a population, a territory and a government that has exclusive jurisdiction over the former two elements. Concisely, this is what the Westphalian archetype of 'modern sovereign statehood' stands for.

It is precisely this separation of inside from outside that has increasingly been put into doubt as a framework to discuss contemporary global politics. For a discipline whose study object is politics in the international realm, sovereign statehood seems to have lost a lot of ground in recent decades which have been characterized by increasing globalization, with the diminishing importance of borders, growing politico-economic interdependence, overlapping jurisdictions and the proliferation of new actors in the political scene. With the diffusion of power and authority, international politics has not only moved beyond the straightforward Westphalian prototype of equal sovereign members to an alleged 'post-sovereign' constellation with a plurality of actors; it has also moved from 'government' to 'governance' (Rosenau and Czempiel, 1992). Indeed, as opposed to notions of unilateral power – centralized authority, command and coercion that characterize the workings of 'government' and are institutionalized by sovereign authority – 'governance' indicates '[the] establishment and operation of social institutions . . . capable of resolving conflicts, facilitating cooperation, or more generally alleviating collective-action problems in a world of interdependent actors' (Young, 1994, p. 53). Hence, whether or not Westphalia is indeed the origin of the society of sovereign states, it has run its course in the age of globalization that manifests itself in a more horizontal reorganization of how order is achieved. This has resulted in a wide literature claiming the decay of Westphalia (Zacher, 1992), heralding the post-Westphalian era (Linklater, 1996), or describing a sort of 'back to the future' scenario with the emergence of neo-medieval structures of governance (Bull, 1995 [1977], see also Anderson, 1996, Friedrichs, 2001).

Within a (liberal) governance framework, the emphasis hence is on the linkages between formally equal members of the international society (networks of interdependence), whose dealings with one another regarding shared problems take place on an equal footing, without relying on centralized, hierarchical and coercive authority structures to create international order. While thus having sovereign equality as its starting point, the relationship between governance and sovereignty is somewhat ambivalent. To the extent that governance relates to growing

interdependence between a plurality of actors on the international plane (both states and non-state actors, such as multinational corporations and non-governmental organizations) as well as the thickening of international regimes and regulation, governance reduces sovereign autonomy, freedom and steering capacity. In this regard, governance pursues to tame egoistic power politics by cooperating in the pursuit of a shared interest regarding a collective and transnational problem. Governance then is conceived as rescuing the international community from 'sovereignty's worst instincts' (Barnett and Duvall, 2005, p. 1, see also Lyons and Mastanduno (1995)). To the extent that governance pertains to a voluntary act of sovereign states to cooperate in common regimes to address transnational problems, it can, on the other hand, be conceived as a reconfirmation of their sovereign status. This ambivalence on the position of sovereignty within governance structures notwithstanding, in both cases sovereignty is conceived in terms of a manifestation of power, autonomy, freedom and control (i.e. steering capacity). This in turn means that, in this perspective, sovereignty works – like traditional conceptions of power – as a zero-sum game. However, as will be argued below, such a representation does not quite capture the dynamics of the sovereignty game itself. Nor does it take into account the broader context in which sovereignty is not only a source of power, but also a constituted power itself.

This chapter further elaborates the relationship between sovereignty, autonomy and governance, in particular in relation to practices of power. That is to say, whereas the governance framework appears to dispel with hierarchical modes of government, and in a sense depoliticizes international politics by relying on the liberal foundation of the international society of equal sovereign members as its basis, I will argue by means of a governmentality framework how power works through the very principle of sovereign equality. In order to address the added value of the governmentality literature for analysing one of the key signifiers in IR, we first need to further elaborate how sovereignty relates to its ally concepts of power and authority in the context of emerging global governance structures.

## Sovereignty between power and authority

'To say that a state is sovereign means that it decides for itself how it will cope with its internal and external problems' (Waltz, 1979, p. 96). Waltz' well-known description of sovereignty, which is linked to his notorious

assertion about states being like-units, has left a significant mark on the academic and political discourse. However, for someone interested in developing a 'theory of international politics', Waltz pays remarkably little attention to theorizing the defining characteristic of what he conceives as its principal actors. Basically, sovereignty is conceived in terms of freedom, autonomy and independence from outside interferences. Where it relates to a system of rules, the emphasis is on non-interference and non-intervention, and sovereignty is reduced to a wager for enhancing one's self-interest to survive in a system of self-help. Sovereignty is epitomized as national interest, which then becomes the central focus of his analysis.

Two related elements can be distilled from Waltz' general description: for one thing, sovereignty is the defining mode of power in international politics, and as such it is linked within neo-realism to capacity and a power to control; this, in turn, is conceived as an individualistic facility.[5] To put it differently, sovereign power originates from and resides with states. States are sovereign and complete agents by themselves and methodologically serve as a given starting point for the analysis.[6] The institution of sovereignty is then construed as a variant of 'possessive individualism' (Ruggie, 1983), and sovereign states emerge and exist essentially outside international society. If this is the default position, and the state of affairs in the so-called Westphalian model, then contemporary politics indeed seems to fit the description of a post-sovereign order. The outmoded picture of a neat system of independent compartments, each displaying absolute power and control over a territory and population, lies at the heart of the aforementioned debate about the move from government to governance. In this view the increasing mobilization of goods and people, the decreasing importance of borders and the increasing juridicalization of international politics denotes a fundamental loss of control and the room to 'decide for oneself', and hence the beginning of a new, post-Westphalian era – although neo-realism itself casts doubts on whether other actors indeed have gained so much influence at the international stage as to rule out sovereign power.

However, the question is whether this depiction of the Westphalian archetype with states as ontological primitive entities is apt. In other words, is sovereignty just a label to describe such an empirical state of affairs, which can be understood in methodological individualistic terms? While traditional approaches side with the disciplinary historiography that pinpoints Westphalia as the origin of the international order

of sovereign states, they subsequently take sovereignty as something given, a transhistorical feature akin to a natural fact rather than an institutional one. Over the past decades, this portrayal of states as sovereign atoms by themselves, and sovereignty as a purely individualistic and antisocial capacity has been criticized from several corners. The English School, for one, is well-known for its rejection of the materialist reading of international politics in terms of a power struggle which neglects its social dimensions and overlooks the possibility, and indeed existence, of an anarchical society (Bull, 1995 [1977]). This not only means that rules, norms and values have an impact on the course of international politics through state behaviour, but it also leads to a different conceptualization of sovereignty as a fundamental institution of that society. Taking its disposition as an institution seriously, this means sovereignty is inherently linked to a body of rules that define its scope (such as the principle of sovereign equality, right to non-intervention and prohibition of force). Thus, while Bull adheres to the distinction between internal and external sovereignty, he focuses on the centrality of mutual recognition in the workings of international society as the basic rule of cohabitation between independent units: 'sovereignty [is] an attribute of all states, and the exchange of recognition of sovereignty [is] a basic rule of coexistence within the states system' (Bull, 1995 [1977], p. 35). Crucially this attribute is in the first place a social quality; sovereignty purports a right to supremacy internally and independence externally, which is to be claimed and recognized, and hence inherently social and relational. In other words, sovereignty first and foremost connotes an authority relationship – both towards the population inside, and towards fellow-states outside.

However, this emphasis on authority does not mean that the English School neglects the idea of sovereignty as an exercise of power. For, as Bull claims, this normative element must be accompanied by the factual reality of sovereignty in terms of the actual exercise of these rights through power and control: 'An independent political community which merely claims a right to sovereignty (or is judged by others to have such a right), but cannot assert this right in practice, is not a state properly so-called' (Bull, 1995 [1977], p. 8). As such, sovereignty as authority is combined with sovereignty as (degree of) control. Moreover, sovereignty for the English School is not just a regulative rule, but a constitutional principle; it not only conditions the behaviour of given units, but also defines the boundaries of the social organism they together constitute (Buzan, 2004, p. 8). In other words, sovereign states are analysed in the context of the international society of which they are part.

This relational disposition of sovereignty has been further elaborated by constructivism. Focusing on the constitutive role of mutual understandings, it identifies sovereignty as a matter of intersubjective identity construction. Whereas the English School, following Bull, focuses foremost on the constitution of the international society through the interaction of state actors, constructivism addresses the other direction of the (inter)relationship, that is, the role of the international society in constituting and legitimating particular entities as agents in the first place (who is designated *as* a power, and according to what rules).[7] Addressing the mutual constitution of structure and agency, constructivist approaches warn against the undue separation of sovereign identities from the conditions of their being (the structure of international society) (see Biersteker and Weber, 1996).[8] This counts not only for the international society, but for the very distinction between inside/outside on which sovereignty balances, as follows from the quote by Bartelson (see p. 232 above). Replacing Waltz' focus on the distribution of power with the distribution of knowledge, Wendt emphasizes the role of ideational factors next to material factors in the construction of international relations and its main participants (Wendt, 1999, p. 140). In terms of sovereign identity, this means that states can only be envisaged 'in relational terms as generated or constituted by internal[9] relations of individuation (sovereignty)... In other words, states are not even conceivable as states apart from their position in a global structure of individuated and penetrated political authorities' (Wendt, 1987, p. 357). Sovereignty then is as much a 'property' of states as it is a 'property' of society (cf. Wendt, 1994, p. 388) – or rather, to be precise and push the argument to its constructivist premises: it is a 'property' of states by virtue of society as follows from the structure-agency debate. As one of the key participants in this debate, Giddens reminds us that ' "International relations" are not connections set up between pre-established states, which could maintain their sovereign power without them: they are the basis upon which the nation-state [*sic*] exists at all' (Giddens, 1985, pp. 263–264). The premise of the mutual constitution of agents and structures is pursued as an important constructivist contribution to understanding the social disposition of sovereignty. Wendt nicely summarizes this point:

> Sovereignty norms are now so taken for granted, so natural, that it is easy to overlook the extent to which they are both presupposed by and an ongoing artifact of practice... If states stopped acting on those norms, their identity as 'sovereigns'... would disappear. The

> sovereign state is an ongoing accomplishment of practice, not a once-and-for-all creation of norms that somehow exist apart from practice. Thus, saying that 'the institution of sovereignty transforms identities' is shorthand for saying that 'regular practices produce mutually constituting sovereignty identities (agents) and their associated institutional norms (structures).' Practice is the core of constructivist resolutions of the agent-structure problem . . . . [I]dentity and institution remain dependent on what actors do: removing those practices will remove their intersubjective conditions of existence.
>
> (Wendt, 1992, p. 413)[10]

In other words, the constructivist framework enables us to elaborate sovereignty not only as the medium for international relations, but concurrently as an outcome of that very practice. As such, it also moves beyond a focus on sovereign orderers as power engines by themselves, to informal rule as a way of establishing sovereign authority and international order.

For both the English School and social constructivism, the meaning of sovereignty hence is based on intersubjective norms or standards for legitimate participation in the international society (cf. Reus-Smit, 1999). Whereas the shift from sovereignty as material power to its relational disposition and authority relationship is an important contribution of these approaches, the downside of moving from the 'distribution of capability' to the 'distribution of knowledge' – at least in the way purported by mainstream constructivism – is that it could end up by neglecting politics. In its elaboration of the role of rules and norms as the outcome of mutual understandings and reciprocity, the implicit assumption is that they are the result of a more or less automatic process among sovereign equals, that will lead to an equilibrium of shared values as the substantive basis for international society. This depoliticized conception of international politics has been criticized by post-structuralist approaches for not taking the link between power and knowledge into account. In other words, mainstream constructivism does not fully appreciate the thickness of sovereignty as a signifier. The next section will further elaborate the relationship between sovereignty, freedom and governance in relation to practices of power. Whereas the governance literature (as discussed in the previous section), the English School and constructivism more or less implicitly rely on a liberal notion of the international society of equal sovereign members, I will argue how power works through the very principle of sovereign equality. To be clear, this does not relate to the point of formal equality versus

material inequality between weak and strong states. Rather, the argument is that the legal principle of sovereign equality itself is the stake for a particular politics constitutive of sovereign identity. This will be elaborated by addressing sovereignty in terms of a Foucaultian perspective on (productive) power and governmentality.

## Sovereignty as a governmental practice

Whereas the Foucaultian perspective on (productive) power and governmentality originally related to power relationships and modes of governance within the national context, it has become an increasingly popular analytic to discuss a variety of issues in international relations, in particular relating to the processes of globalization and the emergence of global governance regimes in general,[11] as well as the role of particular (non-state) actors therein.[12] This chapter joins that discussion by arguing that the governmentality framework is an insightful tool to discuss modes of governance within international society. At the same time it moves beyond the parameters of the debate by showing this is not limited to the age of globalization per se. More specifically, governmentality is a helpful tool to analyse the workings of sovereignty within the international realm as both a *source* of power and authority, and its *effect*, as the outcome of contingent governmental practices that are constitutive of sovereign identities or subjectivities themselves.[13] It should be noted that, whereas Foucault's work lacks a theory of sovereignty,[14] and does not refer to developments in IR, let alone its alleged post-sovereign constellations, his analysis of productive power and governmentality can serve as an inspiration to 'creatively transform Foucaultian categories' (Fraser, 2003, p. 160). It will be argued here that it is fruitful to analyse sovereignty as a governmental project, as part of a manifold regime of power/knowledge that is constitutive of the international order and its (various) subjects. This is based on the notion of productive power:

> We must cease once and for all to describe the effects of power in negative terms: it 'excludes', it 'represses', it 'censors', it 'abstracts', it 'masks', it 'conceals'. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production
> (Foucault, 1977, p. 194, cf. Foucault, 1980a, p. 119)

Crucially, productive power does not rely on a hierarchical and coercive domination of a ruler over its subjects, but derives from heterogeneous

practices of power within society. Within this context, governmentality refers to the 'conduct of conduct', or the 'art of government': 'a form of activity aiming to shape, guide or affect the conduct of some person[s]' (Gordon, 1991, p. 2). With the ostensible tautology, Foucault refers to the double meaning of *conduire* ('to lead') and *se conduire* ('to behave [oneself]') in French: 'Perhaps the equivocal nature of the term 'conduct' is one of the best aids for coming to terms with the specificity of power relations. For to 'conduct' is at the same time to 'lead' others . . . and a way of behaving within a more or less open field of possibilities. The exercise of power consists in guiding the possibility of conduct and putting in order the possible outcome' (Foucault, 1982, p. 789). Government(ality) thus does not only refer to political structures and/or legitimately constituted forms of political subjection per se, but more generally to acting upon the possibilities of action of people: 'To govern, in this sense, is to structure the possible field of action of others' (Foucault, 1982, p. 789).

With the emphasis on the second syllable, governmentality refers to the relationship between government and thought, that is, power/knowledge: the possibility to 'imagine and understand the world in a certain way in order for it to be delineated as a realm of governable conduct amenable to knowledge and accessible to the management and administration of power/knowledge' (Gordon, 1991; Dillon, 1995, pp. 332, 333). In this context, governmentality not only connotes a historically particular exercise of power or authority as such, but as a form of political analysis also explores how this exercise involves particular representations, political imaginaries, expertise and truth regimes regarding that what is to be ordered and governed, and how. As an analytical tool, governmentality thus interrogates and denaturalizes the rationale behind government, insofar as this is dictated by a particular representation and problematization of reality and how this calls for particular interventions in order to lead conduct in certain directions (Larner and Walters, 2004, pp. 496, 511). In this regard, governmentality exposes the productive power of 'government' (as opposed to negative conceptions of power of constraint and repression) in terms of the construction of reality, creation of identity (domains of objects) and rituals of truth (Foucault, 1977, p. 194).

Arguing the usefulness of this analytic for the international realm, this chapter substitutes the original focus of governmentality on the formation of individuals as subjects within domestic society to its functioning at the global level, with sovereign states as subjectivities themselves. Thus, when Foucault takes pains to dethrone the Cartesian

subject as complete autonomous individuality and rational identity by him/herself (which is the central point of the postmodernist propagation of 'the death of the subject'), this analytic can be similarly applied to sovereign states as institutional facts themselves.[15] To put it differently, the notion of subjectivity (subject-hood) refers to the construction of the subject as identity and individuality within the discourse or social order, as opposed to the assumption of the subject as a given starting point for analysis and complete identity by itself. In other words, subjectivity as conceptualized in Foucaultian terms entails an 'ambiguous position as an object of knowledge and as a subject that knows'.[16] As such, it both entails empowerment or agency (creation of identity) and its delimitation (conduct of conduct, imposition of norms of appropriate being). Linking this to our sovereignty discussion, sovereign statehood is thus not just the source of power in the international realm, but also its effect. More specifically, it is the effect of another modality of power, namely governmentality.

Just as governmentality is not limited to the monopoly of state, but consists of a plurality of practices conducted within and across social sites (Walters and Haar, 2005, p. 289), so sovereignty is not the property of the state properly so called, but the product of a plurality of practices conducted within the domestic/international realm. In other words, whereas in traditional conceptions 'sovereignty' pertains to an area of freedom and self-determination (*eius regio, cuius religio*), this chapter elaborates the more ambiguous position of sovereign subject-hood. This results in a redefinition of sovereign authority, power and agency: sovereigns – like the subjects that Foucault analyses – are both 'objects of knowledge' and 'subjects that know'. In other words, in addition to the traditional conception of sovereign states as bearers of power and authority in the international realm, one should address how they themselves are subject to international protocols and regimes of knowledge that empower them as subjects (Dillon, 1995), *and* structure their possible field of action.

In order to further elaborate the relationship between international protocols and sovereign subjectivity, it is helpful to draw a parallel to the legal construct of international legal personality (Aalberts, 2012). In international law, 'agency' in terms of having (being capable of possessing) rights and duties in combination with a capacity to make international claims, is linked to legal personality, that is entities that count as persons under international law. The international legal order takes as its starting point the existence of independent ('free' or 'sovereign') agents who are equal and endowed with a minimum core

of fundamental rights and whose freely expressed consent forms the basis order and society. State sovereignty in international life, therefore, performs functions which are akin to those performed by the concept of individual liberty in the national context (Werner, 2004; Koskenniemi, 2005[1989]). As Koskenniemi has summarized this analogy between individual liberalism and state sovereignty: 'Both characterize the social world in descriptive and normative terms. They describe social life in terms of the activities of individual agents ('legal subjects', citizens, states) and set down the basic conditions within which the relations between these agents should be conducted' (Koskenniemi, 2005[1989], p. 166). Crucially, these conditions not only refer to the freedoms, rights and immunities that are so popular in mainstream IR conceptualizations of sovereignty, but also entail duties and responsibilities. As such, the form of sovereignty (as a legal status) is linked to a contingent substance in terms of rights, powers, *and* responsibilities (Koskenniemi, 1991). Thus, international legal personality pinpoints one of the essential features of the legal institution of sovereignty, namely, the specific way it orders international life by linking freedom or autonomy and responsibility. More specifically, the freedom and equality of sovereign states as their defining feature is constituted within an international legal order that dictates the scope and content of this room to manoeuvre (Shaw, 2003, p. 190). Moreover, through the notion of sovereignty, international law not only presents states as free and equal, but also creates subjects (legal persons) that, by virtue of their privileged status, are held to respect an extensive set of obligations. Within this legal order 'sovereignty' hence entails not only the capacity to make legal claims on the basis of possessed rights, but also the possibility of being held accountable for one's acts – that is, to be governed. Moreover, sovereignty is a 'relative notion, variable in the course of times, adaptable to new situations and exigencies, a discretionary freedom within, and not from, international law' (Wildhaber, 1983, p. 441).

Overall, this reverses the widespread conception of sovereignty as legitimizing a sphere of freedom to sovereignty as a specific way of organizing international responsibility (Aalberts and Werner, 2008). As such, it also moves beyond the juxtaposition of sovereignty and international law that follows from the conventional emphasis on autonomy, independence and formal equality as key features of sovereignty and results in simplistic formulae such as: the more legalized, the less sovereignty is left. This link between individual subjectivity and freedom, and the collective order as established in Leibniz' notion of international legal personality in the 17th century,[17] runs parallel to the governmental

mode of power in Foucaultian terms. Sovereignty is a discretionary freedom which should be exercised in a particular, responsible manner for the preservation or management of the international community at large. Sovereignty then does not stand at loggerheads with international law and/or governance, but actually is a precondition for disciplining member-states in the name of the common good. In other words: the sovereign status of member-states, as subjects endowed with legal international personality and sovereignty rights, opens up possibilities of the conduct of conduct according to prevailing standards of (appropriate) sovereign being, in virtue of their equal membership of the international community.

This links up to Foucault's reading of subjectivity, that entails both a notion of empowerment and agency, as well as a particular constitution of this identity by the imposition of a particular norm of 'being'. This is captured in the so-called society of normalization (Foucault, 1980b, p. 107):

> [w]ithin such a society, membership status, privilege and affiliation is supplemented by a whole range of degrees of normality . . . In a sense, the power of normalization imposes homogeneity; but it individualizes by making it possible to measure gaps, to determine levels, to fix specialities and to render the differences useful by fitting them one to another. It is easy to understand how the power of the norm functions within a system of formal equality, since within a homogeneity that is the rule, the norm introduces, as a useful imperative and as a result of measurement, all the shading of individual differences
>
> (Foucault, 1977, p. 184)

Thus, productive power entails a dual process of homogenization of the social body (in our case: international society of equal sovereign states) while at the same time enabling differentiation and hierarchization of particular subjects by revealing individual distinctions and derivations from the general norm. As such, productive power both 'totalizes' and 'individualizes' (Gordon, 1991, pp. 3–4). Moreover, it pinpoints beyond a traditional conception of sovereignty rights (of equality, self-defence and non-intervention) as attributes to statehood per se, to the governmental power of the norm on the basis of values that these rights promote – that is, to be equally sovereign in a particular *responsible* way. This in turn leads to an alternative reading of the notion of 'rights' and their function within the normative order. This relates to the notion of sovereignty as right and obligation at the same time, and hence the

sovereignty/responsibility doublet elaborated above, and the possibility of being held accountable on the basis of this regime. Foucault distils from the rights–duties doublet a perspective of a rights regime as an instrument of subjectivation. In this perspective the focus shifts from the agency, authority and legitimacy that (sovereignty) rights create, to mechanisms of subjugation that are generated by a particular rights regime (Foucault, 1980b, pp. 95–96).[18] Consequently, such a perspective discloses the interconnection between legal status and rights beyond the legal perspective of rights as a package deal or attribute to personality, to the productive impact of rights in constituting the very subjectivity.

In other words, Foucault's treatise about the constitution of the subject within the national society is applied here in the context of the identity production of sovereign states as subjectivities by virtue of sovereignty rights and formal equality. This qualifies the common notion of sovereign individuality qua freedom and autonomy by addressing the production of legitimate forms of being (subjectivity) and responsibility instead. Productive power as such works through norms (sovereign equality) that entail paradoxical elements of indicating membership of a homogeneous social body (in our case international society of sovereign states) while at the same time working as a mechanism for classification and ranking within the social body by revealing individual distinctions and derivations from the norm (responsible sovereignty). As such, sovereignty rights cannot escape or restrict the sites of normalization but, on the contrary, are mechanisms of discipline themselves (cf. Foucault, 1977, p. 105). In fact, they work to foster the normalization of sovereign subjects, as they 'have typically been justified by an account of what people [or sovereign states] are supposed to be by nature' (Pickett, 2000). And as these accounts are contingent, the juridical picture of formal (codified) rights and duties is supplemented and nurtured by normative developments regarding appropriate statehood within international society and concomitant prevailing ideas about responsible sovereignty.

One historical example that instantly comes to mind in discussing the relationship between sovereignty, legal personality and normative standards is the notorious Standard of Civilization which defined the boundaries of international society in the 19th century and formed the basis for the colonial enterprise (Gong, 1984). Lack of civilization, exemplified in the absence of 'certain institutions'[19] specific to the European tradition, served as a legitimation to deny 'savage nations' both a sovereign status and the concomitant rights and duties. In other words, sovereignty was defined in terms of its origin as a European institution,

a 'gift of civilization', and thus linked to a particular set of cultural practices with the Western mode as its reference point (Koskenniemi, 2002, Anghie, 2005). This example shows that what a sovereign state 'is', is not independent of development of international society as the broader context in which statehood emerges (see also Philpott, 2001). However, at the same time there is an important difference with how governmentality manifests itself in contemporary international society. For whereas the Standard of Civilization worked as a mechanism of exclusion, governmentality foremost works through inclusion. It is a mode of power that works from within society, to conduct the conduct of those who are part of its population. It both homogenizes the social body and differentiates particular subjects on the basis of a norm that applies to all members, as equal and responsible sovereigns.

This logic indeed transpires in contemporary IR practice with the introduction of the so-called Responsibility to Protect paradigm. As a rejoinder to the dilemma of upholding sovereignty as a constitutional principle while conceiving of human rights as core values within a civilized international society, this paradigm identifies sovereignty not as a state's privilege (with accompanying rights of non-intervention), but as a responsibility to protect the rights of its citizens. In addition, these sovereign duties are conceived as *international* responsibilities – which means that a state forfeits its right to non-intervention in case of gross human rights violations, in which case the international community allegedly has a right, or even duty, to protect the citizens involved. To be clear, while the Responsibility to Protect paradigm has been adopted by the General Assembly, and indeed has been referred to in Security Council Resolutions, it is a diplomatic formula, whose legal status remains dubious.[20] Moreover, while often presented as an inventive and radical reconceptualization of sovereignty, the sovereignty/responsibility doublet is far from novel in political theory (Glanville, 2010) and legal discourse, as discussed above. However, its incorporation within international practice does again illustrate the workings of sovereignty as a normalizing principle within contemporary international society.[21]

Seeing sovereign subjectivity in this governmental light thus qualifies the liberal notion of absolute autonomy and freedom as the natural condition of individual states. However, it should be understood that freedom and agency are indeed a crucial condition for the working of governmentality. To put it differently, as a non-coercive form of power, governmentality operates through the modality of freedom and agency, which is both an end and a means for governing: 'Governing is performed through autonomous subjects, not on passive objects' (Sending

and Neumann, 2006, p. 696, see also Dean, 1999). Liberal governance can then be conceptualized as a particular governmental logic that operates by shaping and fostering autonomous and responsible individuals (states) for the protection of the (international) community through a collection of 'governmental techniques', including setting standards for appropriate, effective and legitimate behaviour for individual subjects and examining their performances accordingly. Thus, governmentality works through 'structur[ing] the[ir] possible field of action' in order to produce visible, responsible and predictable actors (Zanotti, 2005, p. 471, Neumann and Sending, 2007). In terms of the preceding discussion on the legal link between sovereignty and responsibility, in governmental terms this hence pertains to the exercise of sovereign freedom in a responsible and disciplined fashion – 'in order to act freely, the subject must first be shaped, guided and moulded into one capable of responsibly exercising that freedom' (Dean, 1999, p. 165). From a governmental perspective, this responsibilization of sovereign subjectivity on the one hand thus constitutes states as ethical actors deemed capable to bear responsibility for their policy choices and, on the other hand, projects them as objects of examination and regulation on the basis of their very identity as sovereign members of the international society. According to prevailing standards within the international community, this responsibility has been extended from safeguarding the sovereign rights of fellow-states (as reflected in the principle of non-intervention),[22] to meeting standards of good governance (according to the neo-liberal paradigm of the World Bank and International Monetary Fund (Zanotti, 2005, Löwenheim, 2008), to protecting their citizens (as reflected in the Responsibility to Protect paradigm), and also, post-9/11, to taking precautions against transnational terrorism within their jurisdiction (Aalberts and Werner, 2011). As part of a governmental project, this responsibilization of sovereignty in turn enables the 'international community' (or those who claim to be speaking in its name) to direct individual states on the basis of their sovereign membership of the international society. Whereas the setting of standards and best practices is one of the management mechanisms in the exercise of global governmentality that works on autonomous subjects, the developments with regard to humanitarian intervention and the war on terror, as well as the securitization of state failure, have also laid bare that such a liberal form of indirect rule is increasingly supplemented by far-reaching measures of direct policing and forceful intervention in case a particular member does not live up to its responsibilities, that is: is not equally and responsibly sovereign (cf. Neumann and Sending, 2010).

## Conclusion

After a constructivist and a linguistic turn, we can now identify a governmentality turn in IR. Since the beginning of the millennium, Foucault's analytic has become an increasingly popular tool to frame the discussion of globalization and the emergence of global governance regimes in general and the emergence of new actors within the international realm. All these studies, to a more or lesser degree, relate to the discussion of the erosion, retreat or disaggregation of the state as key actor in the international realm, and criticize the zero-sum conception of power within the traditional governance and/or globalization literature. This chapter concurs with this criticism, but not so much in terms of the relationship between state and non-state actors, as rather from within the traditional sovereignty game itself – that is, by applying a Foucaultian analytics to the international system as pertaining to relations between sovereign states themselves. In other words, the Westphalian states system itself can be conceived as a governmental project, functioning as a global divide and rule system where states are accorded responsibility for the part of humanity residing within their borders (cf. Foucault, 2007 [1978], p. 110, Hindess, 1998, 2005, Dean, 2007). Against this background, the current chapter has addressed the functioning of sovereignty within the international realm as a governmental practice.

Hence, whereas in most IR analyses of governmentality are linked to the emergence of global society, this chapter has argued that (the usefulness of) governmentality is not limited to, broadly, post-Second World War international relations. Although the 'thickening' of the international realm indeed entails important transformations in the functioning of power that can be meaningfully addressed through a governmentality lens (Sending and Neumann, 2006, Neumann and Sending, 2007), this mode of governance is not a unique phenomenon of globalization per se, but an inherent part of how sovereignty itself functions.[23] To put it differently, the notion of global governance that forms the backdrop of this volume has a wider scope from a governmental perspective than the age of globalization to which it usually refers.

All of this is not to deny the emergence and increasing power of a plurality of actors within the international realm, and the deterritorialization and privatization of governance, as this book's other chapters argue and analyse. Rather, it is to unravel the underlying logic of many governance studies, which assumes that sovereignty, as the power to

decide, can only reside in one place and hence is a zero-sum game. If other actors gain power on the international stage, this then automatically means an inversely proportional reduction of sovereignty for the traditional state members. This line of argumentation would be reinforced by the illustrative but also somewhat misleading concept of diffusion of power that forms the background to the current discussion. It can be misleading insofar as it leaves an impression of a sovereign core or centre that once had full power or control but from which authority is now slipping away. Such a reading however, puts too much emphasis on sovereignty as solely an empirical matter of control and power (as steering capacity), and lacks an understanding of its governmental character, as both a source and the effect of power. As the contributions to this volume show, diffusion of power does not necessarily mean a zero-sum game of redistribution. Rather, centres of authority are better understood as historically contingent concentrations of power. Sovereignty is one such manifestation and indeed a resistant one. And it can be so within the changing contexts because it is itself the result of a contingent governmental practice. After a decade of discussing the death of the state as an outmoded form of government in the age of globalization, many scholars within the globalization literature have realized this was a premature conclusion, and that the world has not yet been taken over by multinational corporations and other non-state actors at the expense of sovereign statehood per se. A governmentality perspective provides tools to analyse these constellations of power. It enables us to analyse that sovereign states remain key agents, but at the same time are object to the diffusion of power as a new mode of governance and a widened and deepened system of rule that works through a widening array of actors and mechanisms.

Consequently, different modes of governance themselves are not mutually exclusive either. In other words, governance and/or governmentality does not need to identify a shift beyond sovereignty as the previous dominant mode of governance. Different modes of governance are not necessarily historically sequential, but can exist in parallel and are mutually constitutive. Hence, while Foucault was right to emphasize that we need to cut off the King's head if we want to study power (Foucault, 1977), this does not imply a move beyond sovereignty per se. Sovereignty is as much constituting as a constituted form of power. In order to understand the continued yet transformed importance of sovereignty within contemporary governance structures, it is insightful to analyse sovereignty as a governmental project itself. This also means that sovereignty does not count as a common good in and of

itself, but serves a broader purpose which can entail both order and justice. Thus, it could be argued that sovereignty is at once a thick and an empty signifier. As a constituting power, it produces reality by articulating a particular way of organizing forms of life; whereas as a constituted power and the outcome of governmental practice, it has no intrinsic content, but is historically contingent itself and subject to international protocols and regimes of knowledge that define *how* a sovereign state should *be* in the contemporary global order.

## Notes

1. This notion originates most famously in the work of Jean Bodin (1530–1596). For an extensive analysis of Bodin's conceptualization, see Beaulac (2003, 2004).
2. For insightful post-structuralist critiques, see Ashley (1988) and Walker (1993).
3. Wittgenstein (1958) is the prominent propagator of the linguistic turn. Within IR it is notably scholars such as Nicholas Onuf, Friedrich Kratochwil and Karin Fierke who relate to Wittgensteinian language games. See also Aalberts (2004, 2012).
4. Two main objections are that 1648 was neither the beginning nor the end of the transformation from medieval to modern society, and that the Westphalian treaties themselves do not refer to the principle of internal and external sovereignty that 'Westphalia' stands for in the academic discourse. See *inter alia* Gross (1948), Wight (1977), Krasner (1993, 1995), Duchhardt (1999, 2004), Osiander (2001).
5. For an interesting analysis of sovereignty as a mode of power, drawing parallels between Waltz and Foucault as unlikely companions, see Neumann and Sending (2010). They rightfully point out that for Waltz sovereignty connotes the scope for making decisions, but this scope itself is not determinate.
6. Goddard and Nexon (2005) emphasize that many constructivist criticisms of Waltz's framework are misdirected, as his 'excessive separation of agents and structures' is an analytical choice and methodological commitment, rather than an ontological claim.
7. For a further analysis of the limits of the English School understanding of the relationship between sovereign statehood and the international society, see Aalberts (2010).
8. Constructivism is a heterogeneous approach with many fundamental debates among self-proclaimed adherents about the constructivist research programme (Adler, 2002). In order to do justice to this diversity, it has become a habit to refer to constructivisms instead (Price and Reus-Smit, 1998, Zehfuss, 2002). These intra-constructivist disputes foremost concern epistemological questions (the social construction of meaning); whereas in terms of ontology, constructivism in all its variants can be identified by their focus on the construction of social reality. This distinction is borrowed from Guzzini (2000).

9. That is: internal to structure, which is defined as a set of internally related elements that in turn are defined by their position within the structure.
10. However, in his renowned *A Social Theory of International Politics* Wendt (1999) further elaborates his thoughts on sovereign statehood in terms of levels of identity. In particular with his discussion of corporate identity and rump materialism, and the distinction between 'social terms of individuality' and 'individuality per se', he runs against his previous contributions to the structure/agency debate by separating agency from the structure in which it emerges (Aalberts, 2012).
11. See for instance Dillon and Reid (2001), Merlingen (2003, 2006), Perry and Maurer (2003), Larner and Walters (2004), Lipschutz and Rowe (2005), Neumann and Sending (2007, 2010) and Joseph (2010).
12. See for instance Débrix (1999), Merlingen (2003), Zanotti (2005), Sending and Neumann (2006).
13. For a further explanation of how this analysis of sovereignty as a governmental practice relates to Foucault's own fierce objections against sovereignty as a language and a source of power, including the necessary qualifications to transpose Foucault's framework to the international realm, see Aalberts (2012).
14. As Foucault's main point is to introduce a new understanding of power, sovereignty foremost serves its purpose as a foil to bring the innovations of disciplinary power and governmentality into a sharper focus (Valverde, 2007). The lack of content for sovereignty in addition illustrates a more meta-theoretical point: as merely a label to indicate the 'family resemblance between a variety of theological, monarchical and juridical projects of rule . . . Sovereign practices and rationalities are everywhere [but] [t]hese can [only] be described and understood [within] the particular struggle/war [in] which they developed. There is no Foucaultian theory of sovereignty, in other words. There are only accounts of situations in which "sovereign" practices emerge as useful weapons in the face of a particular antagonist.' (Valverde, 2007, p. 169).
15. It is argued then that we can transpose 'the individual' for the 'sovereign state' in the quote given on p. 239 above.
16. Michael Foucault (1989) *The Order of Things*, Harvester Press, p. 312, quoted by Dillon (1995, p. 324).
17. See Nijman (2004), who provides an interesting analysis of how Leibniz introduced the concept of international legal personality as a way to recognize the new power configurations, and bringing the arising powers within an overarching normative structure: 'the concept of international legal personality functioned to *legitimize the participation* of the German Princes in international life, but by *the same legal move* established their *responsibility* to conform to the justice-based rules of the law of nations' (Nijman, 2004, p. 499, emphasis added).
18. 'Right' in this context consists not only of law but includes 'the whole complex of apparatuses, institutions and regulations responsible for their application' (Foucault, 1980b, p. 95). Hence the existence of rights in the national realm legitimizes state apparatuses such as police, courts, and so on, which then have a double function as they work both as necessary

institutions to protect the rights and as instruments sustaining disciplinary power (Pickett, 2000, p. 405).

19. John Westlake 1894, *Chapters on the Principles of International Law*, Cambridge University press, p. 136 ( quoted by Anghie, 2005, p. 55). Contrary to the general refutation, the Standard of Civilization hence did not entail a racialization of international politics and law.
20. This paradigm was referred to by the Security Council for the first time in its Resolutions 1674 (2006), and 1894 (2009) on the Protection of Civilians in Armed Conflicts, and explicitly invoked in the context of the situation in a particular country in Resolution 1706 (2006) on the conflict in Darfur, and Resolutions 1970 (2011) and 1973 (2011) regarding the crisis in Libya, and Resolution 1975 (2011) on the situation on Côte d'Ivoire. On its legal status, see *inter alia* Stahn (2007).
21. See also the collection of essays in Lyons and Mastanduno (1995) which discuss the relationship between sovereignty and intervention prior to the formulation and adoption of 'R2P'
22. *Island of Palmas* case, Permanent Court of Arbitration, 2RIAA 829, 1928.
23. For an historical analysis, see Leira (2009).

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# 10
# Conclusion: An Emerging Global Polity

*Iver B. Neumann*

In the Introduction, Stefano Guzzini announced the focus of this book as a question of reconciling two seemingly opposite hypotheses about global politics: is power diffusing in the sense often stressed by scholars of International Political Economy of slipping away from states towards other agents, or is it diffusing in the sense used by Foucauldian analysts of global politics, of spreading to ever new parts of the globe as a result of states working *through* other agents? In this Conclusion, I will begin by pondering the nature of the question understood as a question of homogenizing the globe in political terms. I will then go on to take stock of the situation as it emerges through the cases studies presented in the chapters. I land on a minimal consensus. There is disagreement about how to understand the relationship between state and non-state agents, as well as about the relative importance of these two kinds of agents to global governance, but there is consensus about scale: a growing amount of political stuff is becoming global in character.

## Diffusion and integration

In the natural sciences, diffusion is a many-splendoured phenomenon whereby particles move from a state of high concentration to a state of lower concentration. If we are talking about a solid object, say, a stone, this is a process that moves on a geological time scale. As we all know, it works more quickly with liquids, and very quickly indeed with gases. With gases, say, a perfume, we are immediately made aware of an interesting corollary, namely that the phenomenon may take on a less dense character at the source, but in compensation, the area where the phenomenon is in evidence is growing. When social anthropology became institutionalized in the late-19th century, diffusion came into use as the

master metaphor for how practices spread. It thrived within the confines of structural functionalism, where the key idea was to ask how societies solved the tasks (functions) needed to be a society, and what kinds of regularity that emerged in the process. In an area of colonialism, diffusion was first and foremost a way of talking about the spread of practices from the metropolis to the peripheries. Since the metaphor was taken from the natural sciences, it lent the discourse a whiff of inevitability.

It rapidly became apparent from empirical studies, however, that diffusion was in no way automatic. That which spread, spread in different ways, and the temporality in question was unpredictable. Due to what we would now call hybridization, the outcomes of diffusion, where it occurred at all, were often quite hard to recognize. By the end of the 1950s, both the metaphor of diffusion and the programme of structural functionalism in the social sciences had come under severe strain. Today, such approaches rarely announce themselves directly. One of the few places where it is still alive is, however, in the discipline of International Relations (IR). As Goddard and Nexon (2005 see also Waltz, 1979, pp. 120–121) have recently demonstrated, Kenneth Waltz is a structural functionalist, and he made no bones about it in his *Theory of International Politics*, where he discusses at length the structural functionalist work of anthropologist Nadel as a key source of inspiration.

In this book, we have taken a rather less structural approach to diffusion than did Waltz and other structural functionalists. We have moved on the level of empirical investigation. What kind of diffusion of authority do we observe in different issue areas, and what does that tell us about global governance?

The question may seem new, but it is a variant of the very question that made social sciences. Since the social sciences were institutionalized in the late-19th century, which is to say since the time when diffusion was in vogue, the key questions these sciences have all tried to answer have been how society is possible, what makes it hang together, how it is integrated. The answers were all to do with power differentials. This book moves in the same terrain, but on the level of the globe rather than that of the state. On the one hand, it is hard to argue that a fully fledged global polity exists. It remains, much like early state building was in its day, a project aimed at harnessing certain dispersed social processes to a single political programme, with one of the problems being that there exist a number of different programmes that vie over how to create the global polity (Bartelson, 2006). On the other hand, it is also hard to argue against the fact that all kinds of global communication have become increasingly intense, and that this creates all kinds of

economic, political, legal and normative pressures for establishing order by more means than simple bilateral state contact, if only to stabilize agent expectations of what the future may hold. Hence the importance of the phenomenon of global governance, the core definition of which the introduction gives as 'those things done by governments, yet done by someone else or a combination of actors' and the political situation giving rise to and/or resulting thereof.

The global governance literature, of which this volume forms a part, tries to conceptualize the present state of affairs in global politics as existing somewhere inbetween a fully fledged global polity and a simple set of transnational communications that may be handled by states. As discussed in Stefano Guzzini's Introduction, that entails scrutinizing the question of agents and their relational power – what he calls the steering capacity of different agents, particularly states – as well as diagnosing what kind of resulting political situation that ensues: are we best served with a conceptualization that stresses the continued importance of direct rule by states, or the indirect rule of a whole slate of different kinds of agents? The latter question is a variant of the one that spawned the social sciences, for it asks about nothing less than how global society is possible. The former question concerns power differentials. The problematique is, in other words, as old as the social sciences themselves.

## Chapter findings

Early social science eventually came up with overarching theoretical answers to how society is possible. In this book, we have not tried to emulate those achievements. We have stayed on the level of power differentials. More specifically, we have attempted to investigate the diffusion of authority in contemporary global governance. A vision of governance as state steering capacity invites scrutiny of quantitative and qualitative changes in such capacity.

In the Introduction, Guzzini neatly laid out a common framework for the chapters by breaking down the presuppositions to be made along three axes: concept of power, problematique of governance (is governance driven by agency, scope, mechanisms, a mix of the three?) and, finally, 'problematique of the diffusion of power for global governance'. The latter question is, thinly disguised, a variant of the general question for the social sciences, of how society is possible. If governance has no agency of order, it is epiphenomenal not only to the question of order in global politics, but also, as a corollary, to the question of what

makes global society possible. Not surprisingly given the penchant of researchers for studying phenomena that they think matter, none of the chapters in this volume take up such a stance.

If we follow regime theory, however, we find that governance is a question of steering capacity, and that it provides 'functional equivalents to agential order within new policy networks and issue areas'. In this volume, it falls to Valbona Muzaka to argue the case for regime theory's continued relevance. It is a backhanded compliment to the classification of approaches suggested in the Introduction that she does so by infusing regime theory, traditionally consensus-minded, by reminding us that any community is a community of people not only agreeing about some basic things, but also quarrelling about other things. Communities are communities not only by dint of amity, but also of enmity. They agree about the issues at stake, but not about much else. In terms of general social theory, Muzaka's change of mode from a consensus-based to a conflict-based mode of analysis has wide-reaching consequences. Muzaka's case is one of growing importance in a global knowledge economy, namely intellectual property rights (IPRs). She succeeds in using this reinvigorated version of regime theory to argue that 'what is observable in the case of IPRs is that in some real ways, power has moved away from states *and* non-state actors at the domestic level, towards state *and* non-state actors at the global level'. What is happening is indeed a diffusion of authority, but not away from some kind of agent (states) to others (non-state), but rather in the sense that the entire political game is changing arenas of conflict, from the national to the global. To stay with the basic diffusion metaphor, the perfume is spreading.

Rainer and Nutt's chapter argues along the same lines as does Muzaka's, but with inspiration from the public policy tradition rather than from regime theory. As they put it, in forgetting how states have historically yoked societal agents to their own carriage, '[t]he original insight of the comparative public policy literature that network governance typically changes the role of government vis-à-vis non-state actors (and may even strengthen it or strengthen both simultaneously vis-à-vis the objects of governance) has been lost along the way'. McNutt and Rayner's methodologically innovative approach to mapping virtual networks is worthy of note. Availing themselves of so-called net crawlers, which are asked to map the connectivity between the websites of different agents in global forestry governance, they ask what kinds of power differentials exist within this virtual community (or, to use Castell's term, information society). On the basis of such sociometry (which, one notes, is studied independently of substantial issues), they

conclude that states, and international organizations whose members are states, remain very dominant indeed within the field of forest regulation, but that they do so among other things by harnessing new social energies. Note that, in terms of resources used on political processes, there is a move from the national to the global level. Global governance is strengthened, first and foremost by states. Rainer and Nutt refuse to see this as a diffusion of either authority or power, however. As they put it, state actors 'simply govern in new ways, in part by controlling and directing the information flows that [. . . ] frame policy problems'.

If anyone should need a reminder of the impossibility of drawing up the perfect classificatory scheme, where all categories are mutually exclusive and nothing is left out, consider the similarities between Muzaka's and Rainer and Nutt's chapters on the one hand, and Jakob Vestergaard's on the other. *Contra* the much-discussed fact that markets have, over the last decades, colonized ever new areas of global life-worlds, Vestergaard makes the observation that, at the same time, '[n]ever have market economies been intervened upon in so manifold ways – and in so standardizing and totalizing ways'. With inspiration from Foucault's work on discipline, he goes on to give a broad overview of how key financial institutions have made not only economies in trouble, but *all* economies, more transparent for political intervention, often by international organizations themselves. What is at stake here is definitely steering capacity, for Vestergaard's argument is that financial international organizations and key state members of those organizations wield more political power than ever, but Vestergaard is also concerned with the general structural picture, which, similarly to Muzaka and Rainer and Nutt, he sees as being one of political action moving from the national to the global level. One notes that these three chapters come at the problems from three different angles, only to reach similar conclusions.

So much for foregrounding governance as steering capacity. According to Guzzini's introduction, general International Political Economy (IPE) approaches (or perhaps only Susan Strange-inspired ones?) and Foucauldians think of governance as indirect rule. There is expected overlap between regime theorists and IPE theorists when it comes to findings, however, for IPE approaches are also supposed to conclude that governance provide equivalents to agential order, but also, and in addition to that, to argue that they provide 'basic social values'. One example, which is of particular interest since it in some degree overlaps empirically with Rainer and Nutt's while reaching somewhat different conclusons, is Susan Park's study of the United Nations Environment

Programme Finance Initiative. Park demonstrates how, in roping in private agents, in this case financiers, to help boost the presence of a climate problematique, the UN has in this case paid a price by having those private agents change that problematique. As she puts it, the finance industry has had private authority to shape governance mechanisms. Specifically, climate has been operationalized more strongly as sustainability, which is a way of framing the question that lends itself immediately to marked regulation (what is sustainable is what may turn a long-term profit). Where NcNutt and Rayner found little or no shaping of the forestry agenda by private authority, and so no reallocation of social values, Park finds private authority at work in the overlapping climate agenda, which is to say that there actually exists private-driven reallocation of social values, at least within the programme studied by Park and by the sundry loci affected by it (e.g.The United Nations Conference for Trade and development, UNCTAD; the Global Compact).

To Guzzini, a key structural factor regarding governance understood as rule is the reallocation of basic social values. This is an important theme in Park's analysis, and it takes centre stage in Elke Krahmann's chapter on private military and security companies. Having given a broad overview of the empirical field, she goes on to demonstrate that 'the private market in security services transforms the provision of security from a collective good supplied to a community of citizens living within a national territory into an individual and exclusive property'. Here we have an interesting argument to the effect that the diffusion of authority in this area is akin to the diffusion of perfume in a room: it becomes less strong where it starts (national security of the industrialized world) and stronger where it arrives (pockets worldwide). Instead of ideally dividing up the world according to the inside/outside distinction, with a lot security to those on the inside and zero to those on the outside, security is ideally redistributed according to an allegedly universal principle: those who have private ownership of land, may also have security. On the level of individuals, this makes for a more hierarchical ordering, but on the structural level, what we are seeing is a homogenization of the world according to a core liberal principle – private ownership. Jean-Christophe Graz and Andreas Nölke in a large degree take the presuppositions of IPE for granted, and rather call attention to the question of *which* private agents that are most prominently involved in global governance. At the risk of oversimplification, their argument seems to be that those agents whose personnel are most socially similar to, and most networked with, state agents are likely to be most central to global governance. At bottom, this is a Marxian class analysis.

The most structurally oriented chapters in this volume are Kunz's and Aalberts', Foucauldians both. Foucauldian analyses start from the presupposition that diffusion of power is global governance. We are talking about an analytics rather than causal explanation, and so empirical findings do not take on the character of findings that verify or falsify a hypothesis, but rather as stuff that make the narrative more or less convincing. For this reason, the book may be a meeting of hypotheses, but it cannot be a competition about explaining more or less of social variation, for Foucauldians simply do not play that game. Theirs is a classical approach to the social sciences, more akin to Marxian, Durkheimian and Weberian approaches than to post-war falsification studies.

Tanja Aalberts spells out the implications of beginning an analysis of the states system not by asking about how states qualify, but rather how the act of being constituted by the recognition of other states marks the state. The recognition is grounded in the acceptance of the new state that it comes with certain duties and responsibilities attached. If an agent has duties and responsibilities, it is accountable. If an agent is accountable is accountable, it is governable. It follows that the states system is itself a site of governance, and has been since its inception. The state has governance capacity, but it also operates within a governance-laden field. Rahel Kunz argues that the increased structural importance of governance in global politics has reached a level where the new structures produce new agents. Her case is diaspora groups. Where these groups were previously framed in moral and/or political terms, as traitors to the homeland, lost sheep, important political resources, and so on, they have, over the last couple of decades, increasingly been framed by sending states and international organizations alike as potentially key resources for economic development. Specifically, work migration spawns remittances, and remittances have become an absolutely central resource for developing countries. The strengthened agency and the reframing of these agents from being first and foremost political to becoming first and foremost economic speaks volumes to what is arguably the key underlying theme of the entire volume, namely the strengthening of an economically oriented global discourse on politics. I have chosen to sum up the chapters by proceeding from an agentic perspective – governance as steering capacity – towards a structural perspective – governance as direct or indirect rule. With Aalberts' and Kunz's chapters, we have come full circle, for theirs are readings of how agency and structure are both spawned by concrete practices.

## Minimal consensus

Taken as a whole, the volume is a wall-to-wall of the governance debate. There is disagreement about how to understand the relationship between state and non-state agents, as well as about the relative importance of these two kinds of agents to global governance. One may, furthermore, draw out a minimal consensus.

A reader who is thinking about change in global politics along the same lines as the early studies on diffusion is likely to draw the conclusion from this volume that we are witnessing a diffusion of power on the global level today that is akin to the kind of diffusion we saw in European states when nationalism was at its peak: Social space is becoming more and more homogenous, and the drivers of the process are functional equivalents to what the state was back then. The reader who is thinking about change along the lines of diffusion's and structural functionalism's critics, are likely to conclude that the process is uneven between regions of the world as well as between fields. There seems to be a minimal consensus between the chapters which underpins both readings, however. It has to do with scale. The sundry voices in this volume come together in arguing that a growing amount of political stuff is becoming global in character. The number of agents who are attempting to govern this stuff also seems to be growing. Where there are governing agents, there is governance, and where there is governance, there is a polity in the making (Bartelson, 2006). If you are looking for global society, look no further.

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